

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

September 12, 2002

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, September 12, 2002, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Bud Hentzen, Vice-Chair; Ron Marnell; Don Anderson; Harold Warner; Frank Garofalo; Ray Warren; Kerry Coulter; James Barfield; David Wells; John McKay, Jr., Elizabeth Bishop and Dorman Blake. Jerry Michaelis, Chair and Bill Johnson were not present. Staff members present were: Mike Lindebak, Secretary; Dale Miller, Assistant Secretary; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Donna Goltry, Principal Planner; Jamsheed Mehta, Supervisor, Transportation Planning and Valerie Robinson, Recording Secretary.

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1. Election of Metropolitan Area Planning Commission Chair.

MOTION: Appoint Bernard A. Hentzen as Chair

WARREN moved, **WELLS** seconded the motion, and it carried (11-0).

Election of Metropolitan Area Planning Commission Vice-Chair.

MOTION: Appoint Kerry Coulter as Vice Chair.

WARREN moved, **GAROFALO** seconded the motion, and it carried (11-0).

No other nominations for Chair or Vice-Chair were made.

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2. Approval of MAPC meeting minutes for August 8, 2002 and August 22, 2002.

MOTION: Approve the August 8, 2002 minutes, subject to changes discussed today.

MCKAY moved, **ANDERSON** seconded the motion, and it carried (11-0).

Approval of MAPC minutes for August 22, 2002

MOTION: Approve the August 22, 2002 minutes subject to changes discussed today.

MCKAY moved, **ANDERSON** seconded the motion, and it carried (11-0).

Mr. Blake arrived.

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3. **Consideration of Subdivision Committee Recommendations**
items 3-2, 3-3, 3-5, 3-6, 3-9, 3-10 and 3-11 be taken as one Motion.

MOTION: Take the above items in one motion.

MCKAY moved, **WARNER** seconded the motion, and it carried (12-0).

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- 3-1. **SUB2002-00018** – Final Plat – SECOND ADDITION TO BENTLEY FARMS, located south of 101ST Street North and on the west side of 103rd Street West.

- A. This site is located over the Equus Beds aquifer. **The Equus Beds Management District has approved the use of sewage lagoons for the site.**
- B. Since sanitary sewer is unavailable to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. **County Code Enforcement has approved the site for sewage lagoons.**
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **County Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan has not been approved. An agreement with the property owner(s) to the west is needed verifying that they will continue to accept the water and not block the discharge.**
- E. The applicant shall guarantee the installation of the proposed streets. The two Chinook Courts need to be built to 36 feet

wide and 6 inches thick
rock standard.

The Applicant is advised that although the streets are under construction, no street plans have been approved.

- F. On the final plat tracing, the contingent dedication of right-of-way needs to be referenced in the plat's text. The language should state that "the contingent street dedications are hereby contingently dedicated as street right-of-way to become effective upon the platting of any adjacent subdivision having a street connecting thereto. The costs of constructing said street, are to be borne by the person(s) or agency that owns said adjacent subdivision."
- G. The Applicant is advised that if platted, the building setbacks may be reduced to 35-ft from the section line roads and 30 feet from the interior streets.
- H. Lots 6, 7, 11 and 12, Block 2 do not conform with the 200-ft lot width standard which is measured at the building setback line. **The Subdivision Committee has approved a modification contingent upon each lot conforming with the 100-ft frontage requirement.**
- I. **County Fire Department/GIS** needs to comment on the street names. **The street names are approved.**
- J. The maintenance responsibility of the drainage detention easements needs to be noted in plat's text.
- K. Lot 6, Block 2 does not have a side yard utility easement.
- L. **County Surveying** has requested that all curves need central angles need to be shown.
- M. In the plat's text and the register of deeds certificate "Book" needs changed to "Film".
- N. Utility easements should be continuous along the property lines. Several on this plat are discontinued at drainage and/or detention easements. The easements should be relocated to function properly.
- O. Chinook Court has angles for the street and the right of way. These should be redesigned to have radius bends.
- P. Access drives to any structures in excess of 150' from the edge of the roadway will need to be installed prior to final framing inspection preferably before the start of any above grade construction work. Such drive to be installed according to fire department specifications:
 - 20' of drivable surface is provided the entire length of the access drive designed to withstand the weight of fire apparatus in inclement weather.
 - The surface will need to be an all weather material consisting of rock or gravel, ground asphalt, laid asphalt or concrete. It is to be applied a minimum of 4" in depth consistently over the entire width and length of the driving surface (gravel is prone to problems during extended periods of rain or snow and should be used with caution unless a good solid compacted base has been installed).
 - The streets are to be installed in accordance with Sedgwick County roadway standards and be accepted by the county prior to individual lot development.
- Q. On the final plat tracing, the MAPC signature block needs to reference "Michael E. Lindebak, Secretary".
- R. On the final plat, the MAPC signature block needs to reference "J.D. Michaelis, Chair".
- S. The signature line for the County Commissioners Chairman needs to reference "Ben Sciortino".
- T. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- U. The pedestrian/equestrian easement and tree easement should be platted as reserves. The final plat tracing shall state in the plat's text the purposes of the proposed reserves as well as the ownership and maintenance responsibilities.
- V. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- W. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- X. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Y. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who

acknowledges the signatures on this plat, to be printed beneath the notary's signature.

- Z. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- AA. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- BB. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- CC. Perimeter closure computations shall be submitted with the final plat tracing.
- DD. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- EE. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. **Westar Energy has requested additional easements.**
- FF. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

GARY SEILER, 9449 N. Maize Road, I live south of this property that is being developed. I farmed it prior to it being sold to the Roaches. I know how the ground lays, and I know that there is an area on the west end that holds water. Any excess runoff of the field always runs into that. I never had any water, that I know of, that went beyond that. With them putting a road in, and plotting this off, making a ditch down through there; you know, you take a road and a ditch, the water is going to run on down. That is where you had a field before, and the water soaked in. I am not willing to accept any water running off this development into my property. If it is, I will probably dike it up. Also, the nitrate that is in the soil, the water tests high in nitrate out there. I wonder if these people that are moving out there know that they have to put a well in, and they will have problems with nitrate in their water. Also, the Equus Beds informed me that the lagoons are above ground; lagoons that are lined with liner inside the lagoon. It is not, or they are not okaying, a pit to be dug there for a lagoon. It is above ground with a liner in it. That is all I have to say. Any questions?

MARNELL Anybody have questions of the speaker?

WARNER You say your concerns are the water running south or west.

SEILER Both, my brother farms grounds on the west side and he is concerned about that too. I am the one on the south side, and I am concerned about that. We originally farmed all of that. I sold it to Gregory L Smith. About seven days later he flipped a deal over to the Roaches, and it went into this development stage. It originally was supposed to be one house, a retirement for Mr. Gregory L. Smith. Any other questions?

GAROFALO Mr. Chairman, should we now hear from the County Engineer? I think he is here.

HENTZEN Jim, why don't you see if you can help us out?

JIM WEBER, Sedgwick County Public Works, The area is very flat, and does not drain very well. We do have a concern about drainage to the west. That is the reason that the Subdivision Committee put the requirement in last week for the cross-lot drainage agreement with the property to the west. From looking at the plans we have at this point, I don't believe there will be any runoff to the south except out to the road, on Maize Road, and perhaps south there along the road; but not cross-lot to the south. We are still working with them on the overall drainage plan for the property. I would be happy to try to answer any questions you might have.

BLAKE When you said you don't believe, do you know or don't you know about the property to the south?

WEBER I know with relatively good certainty that there is not a problem with it draining to the south.

GAROFALO According to this Item D, it says that the drainage plan has not been approved. The agreement with the property owner to the west needs to be verified if they will continue to accept the water, and not block the discharge. Where is that at? Currently, from the previous speaker, the property owner to the west is not too happy about it either.

WEBER At the meeting last week, I think for the Planning Commissioners that were there at the Subdivision meeting, the applicants or the agent indicated that they could get the agreement to the west. I don't know. Obviously we don't deal with the whole family thing. I didn't know that these guys were brothers, and it doesn't matter to me. But we are looking at a pocket of water that could develop right in here, and continue naturally up here, and cut off in this direction (showing area on screen). It is not what I call a major amount of water, but if the owner to the west, and that is apparently not this Seiler, does go in there and dike it up, then we will have a problem between the two properties.

GAROFALO If the property owner to the left does not agree to this condition, then what happens? Can they do the plat or not?

WEBER It is a requirement of the subdivision approval at this moment.

GAROFALO So we need to find out if the property owner to the west is opposed, or in agreement.

WEBER I believe Neil holds on to the plat until all the requirements get met, or if that can't be done, it will come back for review by the Subdivision Committee or the Planning Commission. Our feeling last week was it is a drainage issue that will take a little time to resolve, and based on their comments, we did not think it would be a problem to get this resolved.

GAROFALO What if we defer this? It is currently going to be deferred anyway it sounds like. What if we defer it? Would that be all right?

WEBER It does not cause me any problem. You may want to hear from the applicant.

GAROFALO That is fine. I will ask the applicant.

HENTZEN Let me ask Ray if he has any questions?

WARREN I was in that meeting last week, and the question was asked: is there any way legally the man on the west can go out and plug off a drainage site? I think what we are talking about is, what he might do in the future. Would it cause a stoppage? Isn't that right? What we are talking about is runoff maintenance as a result of this development.

WEBER What we are talking about is having the two property owners clarifying their relationship before this plat goes through. I believe you are right. You can't block off the drainage, but it happens all the time, and it is very messy to clean it up. We are trying to have them be proactive, and take care of it up front.

WARREN This is great, and I would hate to hold this plat up if it can be resolved. I suppose another thing would be to create a detention pond that would take care of the excess runoff. To assure that there was no more runoff than there is today.

WEBER The plan already includes three ponds on the property, but along the west side, maybe not all the way to the cul-de-sac, but there is a strip of ground along the west side that would not make it to one of those ponds. That would be like your backyard draining off to the west.

WARREN It is a pretty insignificant thing, if we are going to have a retention pond that is going to take care of the excess runoff. So all we are going to have is what we have now?

WEBER Right.

WARREN I guess I hate to see it held up, waiting for someone to agree to that when there is nothing to agree to.

MCKAY Can we hear from the applicant?

HENTZEN We will go back to that in just a moment.

BISHOP I have a question to ask. Item D says the drainage plan has not been approved, and that no agreement has been reached. Is it typical to approve a plat when a drainage plan has not been approved?

STRAHL Yes. It is not that unusual. Again, we would just hold on to the plat, and not release it for recording until we have approval of the drainage plan.

BISHOP So, we do have something to insure that something gets worked out?

STRAHL Right.

GAROFALO Mr. Chair, is the applicant here?

HENTZEN Would you step up to the podium? I will ask you the question.

MCKAY Lets let him make the presentation, and then we can ask him questions.

HENTZEN That's fine.

CHUCK ROACH I am here on behalf of Bently Farm, the applicant in this case. I live at 1217 N. Coach House Court. I would like to respond to the issue of the runoff to the west, onto that particular piece of land. We are on good terms with the owner of that land, and we don't see any problem in getting the cross-lot drainage easement. The only reason that we don't have it now is because he is in harvest, and he just can't take time away, at this point. I agree that it is a significant item, and I would request that you just approve the plat subject to the drainage plan being approved.

HENTZEN Any other questions of the applicant? Is there anybody else other than the two gentlemen that have spoken on the item, to talk about it one-way or the other? Very good, the rest of the discussion will be by the Board. What do you think?

BLAKE I am going to vote no on the drainage plan.

BISHOP I think it is premature.

MOTION: Approve, subject to comments from staff, and the findings of the Subdivision Committee.

MCKAY moved and **COULTER** seconded the motion.

GAROFALO I want to make it clear in my mind that this won't go through if it is not in agreement. Is that what you are telling us?

COULTER That is why in Subdivision Committee we put in the item D. So we don't have to keep bringing things back to this Board when we approve it with a clause like that. It won't be approved unless the drainage plan is approved, and unless they get the disagreement settled.

WARREN It will be approved, but it won't be recorded.

MCKAY It won't pass this place right here until all the stuff has been presented.

BISHOP Does the motion indicate that this is contingent? Because right now, what that item says is that it is needed.

COULTER What more do you want?

BISHOP I am just asking if that is the way the motion went?

MCKAY The motion was this: that we approve it subject to the staff comments, and Subdivision Committee changes. One of them was that you have to have the cross drainage agreement approved. So, the drainage plan has to be approved. The cross drainage agreement has to be approved before it goes any further past this group right here. If that doesn't get done, then they have to bring it back to us because it would be different.

HENTZEN Are you ready for a vote on the motion?

VOTE ON THE MOTION carried (12-0).

3-2. SUB2002-00040 – Final Plat – ERIN SPRINGS ADDITION, located east of West Street and north of MacArthur Road.

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. **A restrictive covenant is required that prohibits non-domestic uses on the site until public sewer is available.**
- B. **City Water and Sewer Department** requests a petition for future extension of sanitary sewer services.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **County Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan has been submitted.**
- E. The access easement extending to West Street shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
- F. On the final plat tracing, the MAPC signature block needs to reference "Michael E. Lindebak, Secretary".
- G. **Sedgwick County Fire Department** requests 20 feet of drivable surface be provided the entire length of the access drive designed to withstand the weight of fire apparatus in inclement weather.
 - The surface will need to be an all weather material consisting of rock or gravel, ground asphalt, laid asphalt or concrete. It is to be applied a minimum of 4 inches in depth consistently over the entire width and length of the driving surface (gravel is prone to problems during extended periods of rain or snow and should be used with caution unless a good solid compacted base has been installed).
 - An approved turnaround is provided that allows the turning of apparatus in no more than two maneuvers.
 - 13' 6" vertical clearance is maintained the entire length of the access drive.
- H. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)

- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: Approve, subject to staff comments, and citing the findings in their report.

MCKAY moved, **WARNER** seconded the motion, and it carried (12-0).

- 3-3. SUB2002-00090** – One-Step Final Plat – LEGACY PARK WILSON ESTATES SECOND ADDITION, located on the southwest corner of 21st Street North and Webb Road.
- A. Sanitary sewer services are available to serve the site. A guarantee for the extension of City water is needed.
 - B. **City Engineering** has requested a respread agreement for special assessments due to the lot reconfiguration.
 - C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
 - D. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
 - E. Access controls have been platted in accordance with the approval of the Legacy Park Wilson Estates Addition. The plat proposes complete access control along the plat's frontage to both arterials, except for one opening along Webb. Distances should be shown for all segments of access control. The final plat shall reference the dedication of access controls in the plat's text.
 - F. The access easement across Lots 2 and 3, Block 1 shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
 - G. A covenant shall be submitted regarding Reserve A, platted for private drive purposes, which sets forth ownership and maintenance of the private drive, and future reversionary rights of the reserve to the lots benefiting from the reserve. The plat's text shall be revised to reference the platting of the reserve for "private drive" purposes and shall state which specific lots are to be accessed by the reserve.
 - H. The heading "Preliminary Plat" shall be deleted from the final plat tracing.
 - I. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
 - J. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
 - K. A note shall be placed on the final plat, indicating that this Addition is subject to the conditions of Wilson Properties N.E. Commercial Community Unit Plan (DP-200).

- L. The perimeters of the proposed lots shall match the perimeters of the CUP parcel boundaries. **A CUP adjustment has been approved.**
- M. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- N. A Community Unit Plan Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- O. On the final plat tracing, the MAPC signature block needs to reference "Michael E. Lindebak, Secretary".
- P. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the City.
- Q. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- R. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- S. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- T. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- U. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- V. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- W. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- X. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- Y. Perimeter closure computations shall be submitted with the final plat tracing.
- Z. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- AA. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property. **Southwestern Bell has requested additional easements.**
- BB. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: Approve, subject to staff comments, and citing the findings in their report.

MCKAY moved, **WARNER** seconded the motion, and it carried (12-0).

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- 3-4. **SUB2002-00085** – One-Step Final Plat –OLD TOWN SQUARE ADDITION, located on the west side of Rock Island, between Second and Third Streets.
 - A. Municipal services are available to serve the site.
 - B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
 - C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**

- D. Complete access control should be platted along 2nd Street for Blocks 2 and 3. The final plat tracing shall reference the dedication of access controls in the platlor's text.
- E. On the final plat tracing, the MAPC signature block needs to reference "Michael E. Lindebak, Secretary".
- F. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations for Lots 1 and 2, Block 1, and for Lot 1, Block 2. The Subdivision Regulations state that the maximum depth of all non-residential lots shall not exceed three times the width.
- G. The **City Fire Department/GIS** needs to comment on the plat's street names. **The street names are acceptable.**
- H. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- I. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

HENTZEN: All we have to do is have Mr. Wells back; I have to step down on (3-7). Dr. Coulter would you take over for me?

MOTION: Approve, subject to staff comments, and findings of the Subdivision Committee.

COULTER moved, **GAROFALO** seconded the motion, and it carried (11-0-1) **WELLS** abstained.

3-5. SUB2002-00087 – One-Step Final Plat – POWER C.D.C. SECOND ADDITION, located on the north side of 25th Street North and west of Grove Street.

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted. An easement is needed to cover the existing sewer line along the west portion of the plat.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. The platting of minimum building elevations should be noted on the face of the plat and referenced in the platlor's text.
- D. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- E. The dedication of access controls referenced in the platlor's text may be deleted as the plat does not abut arterial streets.
- F. **Traffic Engineering** has requested additional right-of-way along 26th St. North and Madison Ave to conform with the typical 60-ft streets in this area.

- G. The applicant shall guarantee the paving of the proposed interior streets. This guarantee shall also provide for sidewalks along at least one side of all through, non cul-de-sac streets.
- H. The paving guarantee shall include the installation of a temporary turnaround at the terminus of Madison at the plat's north line. The plat's text should indicate that the vacation of the temporary turnaround area will be effective upon the extension of the street northward.
- I. The plat's text should be revised to reference the ownership of Reserve A by the "City of Wichita".
- J. The use of Reserve B for utilities located within platted easements should be referenced in the plat's text.
- K. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- L. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- M. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- N. On the final plat tracing, the MAPC signature block needs to reference "Michael E. Lindebak, Secretary".
- O. The use of Reserve A needs to be addressed in the plat's text.
- P. The building setback in Reserve A needs to be deleted unless structures are proposed for this Reserve.
- Q. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations for Lots 29 and 30, Block 1. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width.
- R. The City Fire Department/GIS needs to comment on the plat's street names. **Minnesota Ct needs to be revised to Minnesota Cir.**
- S. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- T. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- U. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- V. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- W. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- X. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Y. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- Z. Perimeter closure computations shall be submitted with the final plat tracing.
- AA. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- BB. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. **Southwestern Bell has requested additional easements.**
- CC. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: Approve, subject to staff comments, and citing the findings of the Subdivision Committee.

MCKAY moved, **WARNER** seconded the motion, and it carried (12-0).

- 3-6. SUB2002-00088** – One-Step Final Plat – RED BARN ESTATES ADDITION, located north of 55th Street South, on the west side of Meridian Avenue.
- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted
 - B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
 - C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved. A guarantee is required for drainage improvements.**
 - D. The plat's text shall include the standard floodway language.
 - E. The plat proposes two access openings along both arterials. The openings along 37th St. North are approved. In accordance with the Access Management Policy, the openings along 37th St. North and Hillside closest to the intersection need to be rights-in/out and denoted on the face of the plat. A guarantee is required for construction of a channelized rights-in/out opening. The opening along Hillside located along the south line of the plat is approved as a joint opening with the property to the south, contingent upon closure of the existing opening for the property to the south. In the event, the existing opening for the property to the south is not closed, then this opening should be relocated to be in alignment with the northernmost opening for the property across Hillside. Distances should be shown for all segments of access control. The final plat shall reference the dedication of access controls in the plat's text.
 - F. The applicant shall guarantee the closure of the driveway opening located on the abutting property to the south.
 - G. A petition is requested for accel and decel lanes, and modification of the traffic signal. A petition is requested for future left turn lanes along both arterials for the openings with full turning movements; which shall not be activated until determination of a need by the Traffic Engineer.
 - H. The cross-lot access easement with the property to the south and internal access easements shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
 - I. **Traffic Engineering** has requested additional right-of-way along both arterials. The Access Management Policy requires a 60-ft half-street right-of-way width along urban arterials. The Policy also requires an additional 25-ft x 25-ft corner clip at the intersection. **The Subdivision Committee approved a 50-ft half-street right-of-way.**
 - J. Provisions shall be made for ownership and maintenance of the proposed reserves. A covenant shall be submitted regarding ownership and maintenance responsibilities.
 - K. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
 - L. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
 - M. On the final plat tracing, the MAPC signature block needs to reference "Michael E. Lindebak, Secretary".
 - N. On the final plat, the MAPC signature block needs to reference "J.D. Michaelis, Chair".
 - O. A signature line needs to be added for the owners.
 - P. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
 - Q. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
 - R. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
 - S. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.

- T. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- U. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- V. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- W. Perimeter closure computations shall be submitted with the final plat tracing.
- X. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Y. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Z. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: Approve, subject to staff comments, and the findings of the Subdivision Committee.

MCKAY moved, **WARNER** seconded the motion, and it carried (12-0).

3-7. SUB2002-00089 – One-Step Final Plat – HENTZEN ADDITION, located on the southwest corner of Hillside and 37th Street North.

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved. A guarantee is required for drainage improvements.**
- D. The plat's text shall include the standard floodway language.
- E. The plat proposes two access openings along both arterials. The openings along 37th St. North are approved. In accordance with the Access Management Policy, the openings along 37th St. North and Hillside closest to the intersection need to be rights-in/out and denoted on the face of the plat. A guarantee is required for construction of a channelized rights-in/out opening. The opening along Hillside located along the south line of the plat is approved as a joint opening with the property to the south, contingent upon closure of the existing opening for the property to the south. In the event, the existing opening for the property to the south is not closed, then this opening should be relocated to be in alignment with the northernmost opening for the property across Hillside. Distances should be shown for all segments of access control. The final plat shall reference the dedication of access controls in the plat's text.
- F. The applicant shall guarantee the closure of the driveway opening located on the abutting property to the south.
- G. A petition is requested for future accel and decel lanes, future modification of the traffic signal, and future left turn lanes along both arterials for the openings with full turning movements; which shall not be activated until determination of a need by the Traffic Engineer.
- H. The cross-lot access easement with the property to the south and internal access easements shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
- I. **Traffic Engineering** has requested additional right-of-way along both arterials. The Access Management Policy requires a 60-ft half-street right-of-way width along urban arterials. The Policy also requires an additional 25-ft x 25-ft corner clip at the intersection. **The Subdivision Committee approved a 50-ft half-street right-of-way.**
- J. Provisions shall be made for ownership and maintenance of the proposed reserves. A covenant shall be submitted regarding ownership and maintenance responsibilities.
- K. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.

- L. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- M. On the final plat tracing, the MAPC signature block needs to reference "Michael E. Lindebak, Secretary".
- N. On the final plat, the MAPC signature block needs to reference "J.D. Michaelis, Chair".
- O. A signature line needs to be added for the owners.
- P. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- Q. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- R. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- S. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- T. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- U. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- V. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- W. Perimeter closure computations shall be submitted with the final plat tracing.
- X. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Y. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Z. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

COULTER We will hear from the planning staff once Mr. Wells gets back.

NEIL STRAHL Planning staff, presented staff recommendations.

WARREN The document you are talking about that created this new policy, what is that document again?

STRAHL That is the "Access Management Policy."

WARREN When did we approve that?

STRAHL It will be incorporated in our Subdivision Regulations with the next subdivision amendments, which will be reviewed in November.

WARREN But it is now not a policy that is approved by this board or council?

STRAHL It is an approved policy, by the City County and the County Commissioners.

WARREN It is approved by them.

STRAHL Yes.

WARREN Have we approved it here?

STRAHL I know that you have reviewed it.

WARREN Why would they approve it, and then it come back to us?

DALE MILLER Planning staff, it is out of sequence because of the Subdivision Regulations. The overall package of amendments that we have been discussing is out of sequence with the governing bodies review of the "Access Management Policy." They have already taken that up, and approved that last week, as I understand it.

BARFIELD So there is no reason for it to come back here then, is it?

SCOTT LOGAN, Traffic Engineer for the City of Wichita, noted the "Access Management Policy" has been approved by the City Council on August 20, and he then presented a brief overview of the policy provisions that affect this site.

COULTER Any questions of staff?

WARREN It is highly unusual that this policy, as it would affect development through the county and the city, would not have come here before it went to the governing bodies, and that our input wouldn't have gone on to City Council and the County Commission. I just can't believe that we have no input on this at all when it so drastically effects all developments. The second thing that concerns me is just the question, and I don't think you can answer, and I'm not going to ask you to. Why are we using our police powers to go in and take land without just compensation? What is the limit, 70, 80-foot on either side, 200-foot right-of-ways? Certainly there is a limit somewhere. When is it that we look at those streets necessary for the movement of traffic from miles and miles around for the good public, yet we have to owner to give it? When do we take a look at that, and who should pay for it? The public at large, or should we ask this owner for it? We have a lot of precedents in this area, such as sewer. For years and years, we have said that they get sewer, but we will service this lot, but we are going to put in 12-inches because it is for the good of the public down the line. You permit the applicant to pay the first eight inches while the city pays to get it up to twelve inches. We have a lot of precedents. Water lines have been treated the same way. We run a water line to a property. Normally this is what a property owner pays, and nothing says that this water line is going to continue on then we ask for more. So, these are the things I am concerned with. Sure, we have some police powers on this Board to take land without just compensation, but there has got to be a limit to it. We are talking about 120-foot streets, 60-feet on either side on every commercial property. I have great concerns.

BISHOP I think it has only been about 15-years that property owners were not charged for arterials. So that has been a major change in the last several years. I think that once we do have a policy that is established, we need to follow it. What we frequently do is establish a policy, and deviate day by day.

COULTER Are these questions directed towards staff? If not, we probably need to listen to the applicant first.

BISHOP Right.

WARREN Lets hear the presentation first, and then discuss this.

COULTER Applicant, please.

KURT MILLER Agent for the applicant. A couple of issues, I don't believe this board has adopted into the Subdivision Regulations this Access Policy. Is that correct? So what we have conforms to the Subdivision Regulations right now, the 50-foot and the turn lanes. We also submitted a plat before your new policy had been approved by City Council. And as far as the traffic counts, we looked at the traffic counts of the year 2000 that the City took. You have on 37th Street about 46 hundred vehicles per day, on Hillside, 48 hundred, which is a pretty low count for an arterial road. If you look at some arterial roads in the area, down at Hillside at 13th and 21st, you have a four-lane road. You have about 13,000 vehicles per day. If you go over to Rock Road, like 21st to 29th streets, you have 29,000 vehicles per day, and these are also four lane roads. We are looking at an increase of at least four or five times to reach those traffic counts of those arterials streets. If you start comparing to Rock, it is even more. If you look at the nature of the area, it is zoned "industrial" all around it. You have Koch Industries on three of the four quadrants, so they are not going to have high traffic. The Hillside, a mile and a half from Hillside to 254, so that is pretty much a lot of the traffic running up and down Hillside. On 37th Street, about a mile and a half or so from 135, so again your east-west traffic would be on 254 and 96. It is hard to project large traffic counts in even the distant future on these roads because of the nature of the area and the current counts. If you look at an increase of 1% a year in traffic, it takes 70 years to double the volume of traffic. We are talking about needing to quadruple the volume of traffic on this road. Those are the arguments that we have, plus we are looking at a 300-foot length, 10-foot wide, so basically 6,000 square feet of land that we are asked to dedicate for the purpose of right-of-way, which is hard for us to ever see it being needed with the current situation. Six thousand square feet, if you put four or five dollars square foot on there, you are talking about \$25, or 30,000 dollars worth of land that is being dedicated at this point. Any questions?

COULTER Any questions for the applicant?

GAROFALO You don't know of any projections, actual projections on traffic there?

KIRK MILLER I just know the current counts, which are the year 2002 counts.

GAROFALO Are you saying that the 50-foot street right-of-way satisfies the current Subdivision Regulations?

KIRK MILLER Yes, it does. The 50-foot right-of-way would give...right now there are areas that have five to six lanes in a 50-foot right-of-way.

WARNER Does the existing plat have the 25-foot corner clip on it or not?

KIRK MILLER No, it does not.

WARNER I was under the impression that it did.

GAROFALO You don't object to that? I don't think you do.

KIRK MILLER We are following the Subdivision Regulations that don't require it. We just as soon not give the corner clip.

COULTER Any further questions?

KIRK MILLER At that point, with the corner clip, he is giving a 75-foot right-of-way. That is what we would be giving. It would be a total.

LINDEBAK I believe this access policy was presented to the Planning Commission, I think it was in July. I don't recall the exact date. There was a task force that was made up of representatives of several of the local industries, as well as the neighborhood groups, that came up and supported the recommendation that have gone to both the City and the County. It was my understanding, at the time, that the reason the Subdivision Regulations were not being amended with the adoption or the acceptance of the Access Management recommendation of the task force is that the staff was in the process of amending the Subdivision Regulations. And yes, these recommendations would be recommended to be a part of the amendments, to the Subdivision Regulations. I do believe it is definitely the City Council's intention that upon the adoption of the policy that they believed the requirements would be coming forth with any of the new Subdivision Plats after that date.

BLAKE I have a question. This was brought up last week at that meeting. I didn't know that the City Council had already approved, and the County? I don't think any of us knew, did we?

LINDEBAK It went to the City Council about three weeks ago, August the 20th.

BLAKE So my question is, they have already decided what they are going to do, correct?

LINDEBAK These are the standards that the City Council approved. It would have gone to the County Commission also when these were first reviewed in a workshop fashion, and formally approved. Again, the thought was these standards would then be incorporated into the Subdivision Regulations.

BLAKE So where does that leave us?

LINDEBAK I believe, as I said earlier, the City Council is of the mind that when those, or when they took action on the Access Management policies, that those policies would be the policies that would follow from this point, or that point on.

BISHOP I believe there were members of the Planning Commission that served on that task force. Am I wrong on that?

LINDEBAK I am not sure if the Planning Commission did, but I know the realtor, homebuilders, local engineers and representative of each of the DAB's were on the task force. It was a large group.

BISHOP I was thinking perhaps that Mr. Michaelis was on that. It took eighteen months, almost two years, and I think this Board reviewed it at least twice. Certainly the Advance Plans Committee did.

WARREN I have never seen it or anything that indicated this new 60-foot requirement.

COULTER Mr. Anderson.

ANDERSON I think what we have got here is a situation where you have an application made by, or for, this Hentzen Addition prior to the policy being adopted by the City Council. There are ways that you can make a finding that would allow us to go ahead and approve of what the Subdivision Committee has recommended. Even though you do have a policy that has been adopted, there are provisions within that policy for making an exception. Because of the clear cut situation here, the application was made prior to that policy being adopted, I think there is an opportunity here for us to make a finding that we create an exception in this situation.

COULTER Is there anybody in the audience wishing to speak in opposition or in favor of this item. Seeing none, now would you like to make a motion?

MOTION: Approve the plat, subject to the Subdivision Committees recommendations and findings.

ANDERSON moved and **WARREN** seconded the motion.

WARREN Now, the motion is that we approve it subject to Subdivision recommendations, and wave what is considered to be a policy.

COULTER That is correct.

BISHOP Just to clarify, that means the 50-foot right-of-way and no 25 x 25 foot corner clip at the intersection; right? I am not going to support the motion.

MARNELL I am a member of the Advanced Plans Committee, and this did not come to the Advanced Plans Committee.

BISHOP I attended a meeting here, and it must have been during the task force.

MARNELL It must be some other session. It did not come to Advanced Plans. I have a question for the Director. If we approve this contrary to now current City Policy, I assume since the political body makes those policies wither we recommend it or not, that is the policy and would have the force and the fact of regulation. Does this go any further; does this go back to the City Council?

MCKAY It goes to the City Council for acceptance of the Subdivision plat.

MARNELL Assuming if they want to make it conform to policy, they have the power to do that at that meeting.

MCKAY They could ask you to reconsider.

MARNELL Or they could simply change it.

MCKAY Or they could turn the plat down.

MARNELL I will support the motion under those circumstances, but I don't see into the deviation that anything less applies to policy. It would kind of hard to be caught in an odd situation.

BARFIELD He asked the same questions I was going to ask.

MCKAY On Item N, due to the fact that we do have a new Chairman that should be changed to the new Chairman's name.

COULTER Let the record reflect that. Any other comments or concerns? Seeing none, lets bring this to a vote. All in favor say aye, all opposed same sign.

VOTE ON THE MOTION (9-2-1), **BARFIELD, BISHOP** opposed, **HENTZEN** abstained.

HENTZEN I would like to make a comment that I have my doubts that the County Commission was aware that this item had not been before this vote prior to their taking action. I just don't think they would have done that. I can't believe they would not have assumed that we looked at this when they were asked to approve it.

ANDERSON I also want to make a comment relevant to this. In the progress actions of the Planning Department, the items that are in the pipeline, the City Council makes a decision or somebody makes a decision. If there is something in the pipeline, those things should be grandfathered under the old policies, as far as I am concerned. I think the staff should look at it that way too. If you have an item that is in the pipeline, it should be grandfathered at the time the City Council makes a decision on it.

3-8. SUB2002-00057 – Final Plat – REED'S COVE ADDITION, located on the southeast corner of 21st Street North and 127th Street East.

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed. Upon annexation, the property will be zoned SF-5, Single-Family Residential and allow for the lot sizes being platted.
- B. This plat will be subject to approval of the associated zone change and any related conditions of such a change.
- C. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted. **Limitations on sewer capacity have been imposed.**
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. **County Engineering needs to see applicant's drainage plan for any effects on 21st St. County Engineering has noted drainage structures along the south property line. A drainage easement is needed. City Engineering has approved the drainage plan. A guarantee is needed.**
- F. Complete access control has been platted along the site's frontage to perimeter streets. **Traffic Engineering has approved an additional opening along 127th St. East for Lot 40, Block 1. This shall be labeled as "Access control except one opening".**
- G. **Traffic Engineering has approved all street widths. The 58-ft wide segment of Reed's Cove shall be limited to parking along one side of the street.**
- H. **Traffic Engineering** has requested the deletion of Reserve H located at the entrance to the Addition along 127th St. East. **The applicant has reduced the size of Reserve H which is acceptable to Traffic Engineering.**
- I. The Applicant shall guarantee the paving of the proposed streets.
- J. The paving guarantee shall also provide for sidewalks on both sides of Reed's Landing/Reeds Cove which is functioning as a collector, and along one side of the loop street. **The Applicant intends to submit an alternate sidewalk plan.**
- K. MAPD recommends that the railroad right-of-way be connected to the cul-de-sacs by access easements contingent upon its conversion to a public trail use. **The Subdivision Committee did not approve this condition.**
- L. The use of Reserves A and G for utilities located within platted easements should be referenced in the plat's text.

- M. As Reserve A includes a swimming pool, a site plan shall be submitted with the final plat, for review and approval by the Planning Director. The site plan shall include the information indicated in the Subdivision Regulations. Otherwise a conditional use and public hearing will be needed in the future.
- N. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities. This covenant shall also provide for the Homeowners' Association to maintain the "parking strip" located between this site's north property line and driving surface for 21st St. North and 127th St. East.
- O. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- P. **City Fire Department** needs to comment on the street length of Woodbridge Ct at the southwestern corner of the site (650 feet). The Subdivision Regulations limit urban cul-de-sacs to 600 feet in length. **The street length is approved.**
- Q. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.

R. The applicant and GIS need to reach an agreement on the naming of Reeds Cove and Reeds Landing.

- S. "13th St. North" shall be revised to "21st St. North".
- T. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- U. The platator's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- V. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- W. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- X. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Y. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Z. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- AA. Perimeter closure computations shall be submitted with the final plat tracing.
- BB. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- CC. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property. **Southwestern Bell has requested additional easements.**
- DD. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

NEIL STRAHL, Planning staff presented staff recommendations.

JENNIFER CHAMBERS, County GIS, Street Address Coordinator, and Chairperson to Address Committee. Our concerns are that there already exists a street named Reed. It is, or would be, a duplication of street names to allow the names of Reed's Cove and Reed's Landing. Both Cove and Landing are considered to be street types, not part of the name. Therefore, the root of the street is just Reed. We oppose it for that because it is a duplication of street names. That is in the Subdivision Regulations 7-201, Streets and Layout Designs, item (S), states street names shall not be used which will duplicate or be confused with the names of existing streets. They should be used where they are or with logical extensions of existing streets even though separated by undeveloped

land. Street names, except for existing streets, shall be limited to a maximum of 12 characters, exclusive of the prefixes and suffixes, and are subject to the approval of the Planning Commission.

HENTZEN Any questions of the speaker? Yes sir, Frank.

GAROFALO You are asking, suggesting a completely different name?

CHAMBERS Yes, we are.

GAROFALO Do you have any in mind?

CHAMBERS Well, those two streets line up with two existing streets. The street that runs east and west, lines up with 19th Street. The street that runs north and south lines up with newly platted additions to the north, which I believe is Williamsgate. I don't think we would be opposed to names other than those. Although having a street name continue as the same name is the ideal thing.

HENTZEN Any other questions? John.

MCKAY Why are we bringing this to us? I thought it was taken care of under the Subdivision Regulations. Should it be a requirement that comes from the Subdivision Committee? Isn't this an issue for Subdivision?

WARNER I don't remember that the Subdivision heard this presentation as far...

MILLER Yes, she was here. You all approved it over their objections, and now they are back to reinforce the issue.

CHAMBER I would like to say at that Subdivision Committee meeting where I spoke, I was misinformed. I was not prepared to speak on this since it will be City property.

HENTZEN How along ago was that approximately?

CHAMBERS August First. At that time, the recommendations from the Wichita GIS were to make Reeds Cove one word. Which if you write it as one word, it looks strange.

HENTZEN I do remember that.

CHAMBERS It looks strange, and no one else was speaking on it, not realizing at the time that Cove is a street type. Although it not used very often in Sedgwick County, I think there are only five other instances. Cove is a type such as Street, Road, Avenue, Lane or Trail. Cove and Landing are types.

MARNELL I don't think Subdivision would have been opposed to this recommendation. It makes sense.

GAROFALO So should we defer it?

HENTZEN Let me ask, are there any other questions of the staff?

BARFIELD Yes.

HENTZEN Frank has a question, and then we will get you.

GAROFALO If we defer this, would your committee take it up, and come up with a name. What do you do?

CHAMBERS The people planning it could come up with a name. We would just want to approve the name so that it is not a duplicate, and not a strange sounding name that it is spelled easily for people to read and recognize.

HENTZEN Mr. Barfield, do you have a question?

BARFIELD Yes, I do. Since these streets line up with the existing streets, and since this is within the City, why would it not be a recommendation that this be a continuation of those existing streets?

CHAMBERS It is my personal recommendation that they are. This has been discussed with the developer many times, and it was discussed that we would be willing to accept different street names if they were not Reeds Cove or Reeds Landing. My personal opinion is they should be the same name as the street names they are continuations of.

HENTZEN Lets ask the applicant. Is there is anybody here to speak for the applicant?

GREG ALLISON, Mid Kansas Engineering, representing the applicant. I do apologize for discussing street names at this level. We felt; actually just moments before the meeting we found out the agreements we made were not going to work for everybody on the GIS street naming. As of yesterday, we felt this was going to be approved with some revisions that we had compromised on, and felt the street naming group had compromised on. The agreement that I was walking in today with, we were going to call this street Glenwood, and then this eastwest street, Reeds Cove. The reason we switched that was, through countless meetings we have had with the Street Name Committee, that if we made Reeds Cove an east-west street, the numbers were far enough apart that the other Reeds Street, and the name was different enough, that we felt there shouldn't be any confusion as far a emergency access people. Having that approved yesterday, we just though we would be part of consent today, but that is not the case. As Jennifer said at the Subdivision meeting, they didn't oppose Reeds Cove, and I understand that she didn't realize that Cove was a type, but she preferred the two words verses the one word, and we worked that issue out already. We had originally wanted the Reeds

Cover off of 21st Street, and we have moved it to 127th, in a sense of compromising, as well. We do understand that there are Drives, Avenues and Coves, and those are street name types. We do feel or I don't personally don't where a Cove is in town, but it sounds that there are five. I feel like it is not a prevalent type in Sedgwick County area, I think that is tied to a national naming type from what I understand from the street naming people. It is important to our developer that we keep the Reeds Cove. Like we said, we wanted it to be on 21st Street because that is where our phasing begins, but we want a street name that ties into our development name, and kind of keep that going. We do have annexation underway, and I am not sure if that is an issue for the street naming verses it being City or County. I know, and I don't understand completely how they operate, the City is not here in opposition, unless she represents that group too. We are planning on being in the City of Wichita and felt like we had reached an agreement yesterday actually that Reeds Cove would work with the GIS people. With that, I would be happy to answer any questions that you might have.

HENTZEN Any questions? Gregg just a minute, I want to ask you, you said you thought we had an agreement yesterday?

ALLISON Before this meeting, Neil had said it had not been agreed to. That was the first time I had heard that it had not been agreed too.

HENTZEN How did you get the idea that it was, or that you had an agreement?

ALLISON They told me, via phone.

HENTZEN They being?

ALLISON They being Mike, in the City GIS department. He called and agreed to the Reeds Cove as an east-west street would be approved, and Glenwood as a north-south street would be approved as well. Based on that, we felt that this wouldn't be discussed right now.

HENTZEN Thank you. Ray did you have a question?

WARNER Could we make this plat approval subject to you and the necessary administrative people getting together, and work out that street name. Is it something we are going to resolve here and now?

ALLISON I don't know if we can get it resolved. We have compromised, and they have compromised. We thought we had an agreement, and I am not sure that our developer has much more for him to compromise. So I hate to bring it to you guys like this.

WARNER I hate to sit here and have us try to name streets. If he thinks they have an agreement, I don't know why we don't go ahead and accept that agreement.

MCKAY Because staff doesn't agree to it. What agreement do they have?

WARREN It sounds like staff agreed to it, but GIS doesn't.

ALLISON We had an agreement with the City GIS Department. I had a call, and they confirmed it would work. Based on that, I came in fully expecting this to be a consent item.

WARNER Now who is holding the ball?

ALLISON The County GIS. I don't know how they inter-relate to one another. We are going to be in the City, and the City is not here in opposition.

HENTZEN Harold Warner wants to ask a question.

WARNER It looks to me like your developer or owner would have some leeway. If he does not want to compromise, you are liable to leave here with whatever they line up with. In my opinion, I think we ought to approve the thing on the condition that they come to terms on street names, and if not, let's line them up and name them.

WARREN It is going to be the City. Apparently you are going through the same process with the County, but obviously you are going to be annexed, and the City has approved the things he is requesting, I'm kind of in favor of going along with that.

BISHOP I think possibly that part of the difference is that the County GIS system may be more tied in with the 911 system, and the emergency response.

ALLISON I am not sure about that.

HENTZEN Are you finished?

ALLISON I don't want it to be decided, if it is not what we want. So if you put a caveat of getting it worked out, that is fine. I would prefer getting it agreed to what was agreed to yesterday.

MCKAY Do you want a deferral, is that what you want? You can have a deferral or we are going to approve it subject to some changes being made. We are putting the ball in your court. Or we can name them here today.

ALLISON I don't want you to name them here today, unless it is what we agreed upon yesterday. Other than that, we are ready to defer.

MCKAY I am ready to make a motion to defer. I am tired of sitting here trying to work out the streets for the last 30 minutes.

HENTZEN Since Barfield had his arm up, let me ask him?

BARFIELD If I hear him correctly, he is stating that his client has no room for any more compromise. So it is our way or the highway. That is what I hear him saying? He is speaking for his client.

HENTZEN Lets see if there is anybody else in the audience. Thank you. Is there anybody in the audience wanting to speak on this subject for or against? Yes sir.

ROB RAMSEYER, Ritchie Associates, applicant. I am going to lay my cards on the table. I do not want to defer this plat. Greg has worked long and hard to come to an agreement on street names, and it changed at about 1:28 p.m. so you can appreciate that he is frustrated. We would like Reeds Cove on the plat because we are real conscious about creating a neighborhood. We worked real hard at that. We think that is important. If we can't have the main entry, we would like it to stay at the secondary entrance off of 127th Street. That is what we want. If we can't have that, rather than defer, I would have you approve it subject to the plat not being recorded until the street names have been agreed upon with GIS. We have worked long and hard at this to not come to the podium. I want to assure you guys of that. We try to work these things out ahead of time. We would like our street names. We do not want to defer. If you need to approve, subject to the agreement, please do that.

HENTZEN Any questions of the applicant? If not, is there anybody else wishing to speak on it? Back to the Commission.

MOTION: Approve, subject to staff comments, with the exceptions that the applicant needs to get together with whoever to get the streets names worked out, and the plat will not go forward until that is done.

MCKAY moved, **MARNELL** seconded the motion, and it carried (12-0).

HENTZEN Is there anyone in the audience who wants to speak on 4-1, 4-2 or 4-3? We have a conflict on 4-1. Seeing that there are no others to speak on the 4-1, 4-2, 4-3. We will now play the Opening for the Public Hearing. We need a motion to approve 4-1 by itself, and take items, 4-2 and 4-3 in one motion.

3-9. DED2002-00023 – Dedication of a Utility Easement, from Brian J. and Deanne R. Joplin for property located north of Central, west of West Street.

OWNER/APPLICANT: Brian J. and Deanne R. Joplin, 1212 N. Main, Garden Plain, KS 67050

AGENT/ENGINEER: Air Capitol Land Surveyors, C/O Bob Previtera, 2160 W. 21st Street, Wichita, KS 67203

LEGAL DESCRIPTION: The east 10 feet of Lot 5, except the east 157 feet thereof, Replat of part of Lot 3, Dougherty Place, Sedgwick County, Kansas.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. SUB 2002-80 and is being dedicated for construction and maintenance of public utilities.

Planning Staff recommends that the Dedication be accepted.

MOTION: Approve, subject to staff comments, and the findings of the Subdivision Committee.

MCKAY moved, **WARNER** seconded the motion, and it carried (12-0).

3-10. DED2002-00024 – Dedication of a Utility Easement, from Leo Rasmussen, north of Harry and west of West Street.

OWNER/APPLICANT: Leo Rasmussen, 1927 Garland, Wichita, KS 67203

AGENT/ENGINEER: N/A

LEGAL DESCRIPTION: The north two feet of the south ten feet and the west two feet of the east ten feet, Lot 3, Windover Addition.

PURPOSE OF DEDICATION: This Dedication is a requirement of ZON 2002-30 and is being dedicated for construction and maintenance of public utilities.

Planning Staff recommends that the Dedication be accepted.

MOTION: Approve, subject to staff comments, and the findings of the Subdivision Committee.

MCKAY moved, **WARNER** seconded the motion, and it carried (12-0).

3-11. DED2002-00025 – Dedication of Street Right-of-way, from Leo Rasmussen, north of Harry and west of West Street.

OWNER/APPLICANT: Leo Rasmussen, 1927 Garland, Wichita, KS 67203

AGENT/ENGINEER: N/A

LEGAL DESCRIPTION: The west five feet of Lot 3, Windover Addition.

PURPOSE OF DEDICATION: This Dedication is a requirement of ZON 2002-30 and is being dedicated for five feet street right-of-way.

Planning Staff recommends that the Dedication be accepted.

MOTION: Approve, subject to staff comments, and the findings of the Subdivision Committee.

MCKAY moved, **WARNER** seconded the motion, and it carried (12-0).

Item 4-1 through 4-3 may be taken in one motion.

4-1. VAC2002-00030 – Request to Vacate Platted Alleys.

OWNER/APPLICANT: USD 259

AGENT: Joe Hoover

LEGAL DESCRIPTION: That portion of the remaining platted north - south 15-foot wide alley that abuts Lots 1-14, Lawrence's 5th Addition, the platted east - west 15-foot wide alley that abuts Lots 1-5, 10, 11, & 16, Humphrey's Addition and the north 235.10-feet of the platted north – south 15-foot wide alley, Humphrey's Addition.

LOCATION: Generally located southwest of the Douglas Avenue – Seneca Street intersection, 221 South Seneca, Allison Middle School.

REASON FOR REQUEST: New and existing school buildings will or are encroaching on the alleys.

CURRENT ZONING: Subject property and surrounding properties are zoned B Multi-family

The applicant is requesting consideration for the vacation of the platted alleys as described in the Legal Description. During the planning for the proposed expansion of Allison Middle School, existing encroachments onto the platted alleys were found as well as new encroachments created by the expansion. There are sewer lines in the north to south alleys. Based upon information available prior to the public hearings, planning staff recommends approval of this request to vacate the described portions of the platted alleys.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time August 22, 2002, which was at least 20 days prior to this public hearing.
2. That private rights will not be injured or endangered by the vacation of the above-described platted alleys and the public will not suffer loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be approved.

B. Therefore, the vacation of the portion of the easement described in the petition should be approved subject to the following conditions:

- (1) The sewer lines in the north - south alleys be relocated, abandoned or a guarantee is provide for the relocation or abandoning of the sewer lines.
- (2) Dedicate a 20-foot easement to cover the sewer line, including that portion of the sewer line that is not in the portions of the proposed vacated alleys.
- (3) Dedicated 10-foot of ROW along Seneca Street.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (5) All improvements shall be according to City Standards

HENTZEN Is there anybody on the Commission ready to make a motion.

MOTION: Approve, subject to staff comments, and citing the findings in their report.

GAROFALO moved, **COULTER** seconded the motion, and it carried (11-0).

4-2. VAC2002-00032 – Request to Vacate a Portion of Reserve F in Broadmoor Addition.

OWNER/APPLICANT: USD 259

AGENT: Joe Hoover

LEGAL DESCRIPTION: That portion of the remaining platted north - south 15-foot wide alley that abuts Lots 1-14, Lawrence's 5th Addition, the platted east - west 15-foot wide alley that abuts Lots 1-5, 10, 11, & 16, Humphrey's Addition and the north 235.10-feet of the platted north – south 15-foot wide alley, Humphrey's Addition.

LOCATION: Generally located southwest of the Douglas Avenue – Seneca Street intersection, 221 South Seneca, Allison Middle School.

REASON FOR REQUEST: New and existing school buildings will or are encroaching on the alleys.

CURRENT ZONING: Subject property and surrounding properties are zoned B Multi-family

The applicant is requesting consideration for the vacation of the platted alleys as described in the Legal Description. During the planning for the proposed expansion of Allison Middle School, existing encroachments onto the platted alleys were found as well as new encroachments created by the expansion. There are sewer lines in the north to south alleys. Based upon information available prior to the public hearings, planning staff recommends approval of this request to vacate the described portions of the platted alleys.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time August 22, 2002, which was at least 20 days prior to this public hearing.
 2. That private rights will not be injured or endangered by the vacation of the above-described platted alleys and the public will not suffer loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be approved.
- B. Therefore, the vacation of the portion of the easement described in the petition should be approved subject to the following conditions:
- (1) The sewer lines in the north - south alleys be relocated, abandoned or a guarantee is provide for the relocation or abandoning of the sewer lines.
 - (2) Dedicate a 20-foot easement to cover the sewer line, including that portion of the sewer line that is not in the portions of the proposed vacated alleys.
 - (3) Dedicated 10-foot of ROW along Seneca Street.
 - (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 - (5) All improvements shall be according to City Standards

MOTION: Approve, subject to staff comments, and citing the findings in their report.

GAROFALO moved, **WARNER** seconded the motion, and it carried (11-0).

4-3. VAC2002-00033 – Request to Vacate a Portion of an Easement.

OWNER/APPLICANT: Dick's Sporting Goods

AGENT: Kaw Valley Engineering

LEGAL DESCRIPTION: That portion of the platted easement, as described in Exhibit A, located Lot 9, Towne West Square 2nd Addition.

LOCATION: Generally located northwest of the Kellogg – West Street intersection, 4600 W Kellogg Drive, Towne West Square.

REASON FOR REQUEST: The applicant proposes to demolish the existing building and to build a new one.

CURRENT ZONING: Subject property and property to the north is zoned LC Limited Commercial. Properties to the south and east are zoned LI limited industrial. Property to the south is IH Loop 235.

The applicant is requesting consideration for the vacation of a portion of the platted easement as recorded on Lot 9, Towne West 2nd Addition. The applicant proposes to demolish the existing building and build a Dick's Sporting Goods.

Based upon information available prior to the public hearings, planning staff recommends approval of this request to vacate this portion of the platted easement.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time August 22, 2002, which was at least 20 days prior to this public hearing.
2. That private rights will not be injured or endangered by the vacation of the above-described platted easement and the public will not suffer loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be approved.

B. Therefore, the vacation of the portion of the easement described in the petition should be approved subject to the following conditions:

- (1) The applicant provide a guarantee of the relocation of water and sewer.
- (2) The applicant provide temporary easements to cover all the existing utilities until they've been relocated.
- (3) Dedicate replacement easements to cover all the relocated utilities, which must be approved by the Public Works Engineer or the Utility Companies.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (5) All improvements shall be according to City Standards.

MOTION: Approve, subject to staff comments, and citing the findings in their report.

GAROFALO moved, **WARNER** seconded the motion, and it carried (11-0).

HENTZEN We are not ready for item #5.

5. **CON2002-00044** Gordon and Beverly Ruble request Conditional Use permit for a kennel (doggie daycare) on property described as:

The West Half of the East Half of the Northwest Quarter of the Northeast Quarter of Section 17, Township 29 South, Range 2 East of the Sixth Principal Meridian, Sedgwick County, Kansas, except the North 60 feet thereof for road. Generally located south of 87th Street South, approximately ½ mile east of Rock Road.

BACKGROUND: The applicant is requesting a Conditional Use for a dog kennel on a 10-acre un-platted parcel located south of 87th Street South and east of Webb Road. Derby's city limits are approximately 3000 feet west of the application area. The application area and all surrounding properties are zoned "RR" Rural Residential. Much of the area surrounding the application area is in agricultural fields. One neighboring residence lies approximately 600 feet from the proposed use site to the east, another neighboring residence lies approximately 430 feet from the proposed use site to the northwest, and another neighboring residence lies approximately 180 feet southwest of an existing barn for the proposed use. The application area is well screened to the west by existing vegetation. The application area is developed with a primary single-family residence, and a 48x36 foot barn. The applicant intends to build another barn, to a maximum size of 60x36 feet, to house the kennel operation; the applicant also intends to construct a fenced outdoor exercise area between the two barns (see the attached site plan). The applicant indicated to staff a desire to operate a kennel facility for 50 to 60 dogs.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH: "RR" agricultural fields
SOUTH: "RR" agricultural fields, flood plain
EAST: "RR" large lot residence
WEST: "RR" large lot residences

PUBLIC SERVICES: The property is located along 87th Street South, an unpaved two-lane section line road with a 50-foot half-width right of way at the application area. No traffic counts or projections are available for this section of 87th. The 2030 *Transportation Plan* does not designate this road as a future arterial. The application area is served by an on site sewage lagoon and on site well.

CONFORMANCE TO PLANS/POLICIES: The “Sedgwick County Development Guide” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan*, amended in January 2002, identifies this area as within the Derby “Small City Growth Area”.

The Derby Comprehensive Plan identifies the application area (3000 feet due east of Derby) as within the “Ten-year Urbanizing Growth Area”, although the Derby planner states that no requests are currently taking place in this area, most development requests are taking place northeast of the city. The Derby Zoning Ordinance lists “animal kennel” as a prohibited use in residential districts, and a prohibited use as a home occupation.

The *Wichita-Sedgwick County Unified Zoning Code* (UZY) lists “Kennel, Boarding/Breeding/Training” as a Conditional Use in the “RR” district. The UZY definition of “Kennel, Boarding/Breeding/Training” is “...premises housing over ten adult dogs.” The UZY supplementary conditions for this Conditional Use are attached to this report, they include a required separation of at least 200 feet from any outdoor kennel facilities to any neighboring residences, and required screening of kennel facilities located within 600 feet of any adjoining property line.

RECOMMENDATION: Planning staff finds that because the requested Conditional Use is within a designated Small City Growth area, caution should be taken to ensure that this potential use does not hamper future anticipated residential development. Therefore staff recommends that a time limit be placed on the Conditional Use, consistent with Derby’s designation of this area as the “Ten-year Urbanizing Growth Area.” Staff finds that the number of dogs kenneled at this site should be limited, and that conditions should mitigate negative effects of the use on nearby residents, particularly the residence less than 200 feet from the proposed use site. Staff finds that the submitted site plan will require revision to be in compliance with the UZY requirements for screening and a 200 foot separation of outdoor facilities from residential neighbors. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to a revised site plan, approved by the Planning Director, demonstrating required distance separation and screening, and the following conditions.

1. The Conditional Use shall comply with section III.D.6.k. of the Wichita-Sedgwick County Unified Zoning Code, and applicable federal, state, and local requirements (e.g. Chapters 5 and 14 of the Sedgwick County Code).
2. The applicant shall obtain all applicable permits including, but not limited to: building, health and zoning.
3. Development and maintenance of the site shall be in conformance with the approved site plan.
4. Existing tree/hedge rows along the boundaries of the site shall be preserved and trees replaced as required.
5. The Conditional Use shall be valid for a period of 10 years, and may be extended for a period of two years, if approved, by use of an administrative adjustment.
6. The Conditional Use shall be limited to a maximum of 50 kenneled dogs.
7. The kennel shall be for housing and training only, breeding shall not be permitted under this Conditional Use.
8. All kenneling shall take place inside the indicated buildings. Dogs shall be outside for no more than two hours a day, between the hours of 8 am and 8 pm, only in the designated exercise area, and only when supervised.
9. Drop off and pick up of dogs shall not take place between the hours of 10 pm and 6 am.
10. The designated exercise area shall be enclosed by a solid screening fence, the fence shall be a minimum of six feet high.
11. The kennel operator shall have on file proof of rabies vaccinations by a licensed veterinarian and proof of identification and ownership for all dogs five months and older.
12. Artificial lighting shall be provided in any indoor run for a minimum of 25 feet of candle illumination. Lighting shall be a minimum of 30 inches above the floor and uniformly distributed.
13. Cleaning of the boarding kennel facility shall be performed as often as necessary to maintain sanitary conditions, and a “suitable method” of eliminating excess water from animal housing facilities shall be provided as determined by the Department of Community Health. Interior surface materials shall be constructed of non-porous materials that are impervious to moisture. The indoor kennel facilities shall have fresh air ventilation providing a complete air change at a minimum of five- to six- minute intervals. Exhaust and vents or air conditioning shall be provided when the ambient temperature is 85 degrees or higher.
14. Sufficient quantities of food and water shall be provided to keep the dogs in good physical condition. The animals shall be fed at least once daily and provided clean water at all times. Food and water containers shall be located to minimize contamination and shall be cleaned as often as necessary to maintain sanitary conditions.
15. All waste materials shall be disposed of in such a manner as to minimize odors and disease hazards. The boarding kennel shall be maintained in a sanitary manner as required by applicable codes (e.g. Chapter 14 of the Sedgwick County Code).
16. The animals confined in the boarding kennel shall be maintained in good physical condition, free of infectious diseases and parasites.
17. The boarding facility shall be open to the unannounced inspection by Sedgwick County of Code Enforcement personnel during reasonable daylight hours to insure continued compliance with the above requirements.
18. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the surrounding area: Properties surrounding the application area are all zoned “RR”, and are used for agricultural and large lot residential purposes, giving a “rural” character. The UZY lists kennels as a

Conditional Use with conditions to protect the character of rural areas. The listed conditions should work to protect the character of this area; the conditions put a time limit on the use, for if and when this use is out of character with anticipated urban-scale residential development. Existing hedgerows and future landscape screening should preserve the character of this area.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential, which primarily permits large lot residential uses. The site could continue to be used as a residence without the Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Potential noise, odors, and traffic generated by the requested Conditional Use could negatively affect nearby residents. The listed conditions should work to minimize negative effects, and allow the use to expire if incompatible with future development.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested Conditional Use is in conformance with the *Wichita-Sedgwick County Comprehensive Plan*, as the property is currently zoned "RR", it is not in conformance with the plan as a rural use in a designated Small City Growth Area. The requested Conditional Use is in conformance with the *Wichita-Sedgwick County Unified Zoning Code*, provided that the supplementary conditions of the code are placed on this use.
5. Impact of the proposed development on community facilities: The requested Conditional Use will result in an increase in traffic on unpaved 87th Street South. Right of way at the application area is sufficient for future widening, should widening be necessary.

DALE MILLER Planning Staff, presented staff recommendations.

HENTZEN Any questions of staff?

WARNER Dale, what you stated here varies from the written recommendation? Are they now the staff recommendations, or are you just informing us?

MILLER We did not have any problems, and I don't believe the applicant had any problem with the issue about the sound insulated building on Item 8. I don't believe they had any problem changing on Item 9 the hours of operations from 8:00 p.m. to 6:00 a.m. Down at Derby there was not any discussion about jumping from 50 to 60 dogs. Staff was working with the applicant in terms of the number of dogs, and it is possible what the staff selected from was what they were provided, a range of 50 to 60 dogs, and staff said just 50. Perhaps what they are really after is 60, but that wasn't discussed at Derby. The 15-year period, I think what they are concerned with, should this be approved, and should Derby annex them, then the 15-year period would give them some comfort and security with the non-conforming issue. If it is approved, and then it gets annexed, the Derby zoning code does not permit kennels in residential districts. According to their annexation policy, when property is annexed they go into the lowest category which is single-family residential, as I understand it. If it were annexed, it would immediately become a non-conforming use. And what they are trying to do for the investment anticipated going on there is that they would have some comfort level that they could at least get 15-years out of it.

HENTZEN Any other questions?

WELLS What was it on # 5 that they said the Derby board wanted put in there?

MILLER The Conditional Use would be valid for a period of 10-years, and extended by re-application and public hearing only.

HENTZEN That was a (5-4) vote.

MILLER Well, that was one of the recommendations that was put forward, but since they recommended denial, it really didn't count. I just wanted to give to you an idea of what they were discussing, and what they tried to get into a motion.

BISHOP Mr. Chair, may I ask for clarification?

HENTZEN Yes, go right ahead.

BISHOP What I wrote down was a compromise on Number 5 earlier, was that the Conditional Use would be valid for a period of 15-years, period.

MILLER When the applicant gets up here he is going to ask for that number to be switched from 10 to 15.

HENTZEN Mr. Frank.

GAROFALO Dale, staff is not recommending these changes.

MILLER We are comfortable with Number 9, regarding the hours. We are comfortable with Number 8 on the sound insulation. I think we thought the 10-year period made sense in terms of what Derby's projected growth is, but as we all know that can vary. Since their adopted plan is that time period that is what we were recommending. To me, if you go from 50 to 60 dogs, it is not going to make any difference.

HENTZEN Any further questions of staff? If not, I think we are ready for the applicant.

GREG FERRIS I represent the applicant in this case. They are here, and will make a short presentation themselves. I was not involved in this case at the Derby Planning Commission, but I have reviewed the minutes. I believe there are some issues that

came up there that really aren't real applicable, and I will discuss those in just a second. We would like Item 5 changed to 15-years which then would require us to re-apply in 15-years. As you are aware, financing for 10-years is not that easy. If you don't have a Conditional-Use for the period of time that your financing will cover, you will have some problems. We do need a 15-year period. If it does get annexed, it will be in 10, 12 or 13-years, and it won't have much of an impact on Derby. The second part of that equation is that we would like this change to allow 60 dogs. When you have American Boarding Kennel Association statistics showing that the average attendance at a kennel is about 63%, but you need to be able to get the maximum numbers during the peak times when you are boarding during Christmas. If you can get those extra 10 dogs, that helps you financially. So the average that this kennel will probably house will be in the 30 to 45 range, but they would like flexibility, and that is why they are asking for 60. I don't believe staff has any problems. The current building is already sound insulated with 8" thick insulation. There will be no noise coming out of this facility. We do project that, if this is a problem, we will have to construct another building. That building will also be constructed in the same manner, so we have no problem with sound insulation. I would like to address a couple of issues on the aerial. Noise was an issue that was raised frequently at the Derby Planning Commission, and we want to make a couple of things clear. First of all, in the first phase, until the first quarter of next year, until we are able to get our other building constructed, there will be a period of one to two hours a day when the dogs will be outside. They will be housed. They will be behind a fence. The exercise area is inside, and I will pass out some stuff in a minute. The exercise area will be inside. The only time dogs will be out is when we have to clean, and during bad weather. We will not take them out at all. So this is not something that will happen everyday. Once we construct the new building, there will be no activity outside of the buildings. These will be totally enclosed. There is no noise issue. This is an area where there is hunting; there is agriculture. There are existing dogs that make far more noise than we could ever perceive that would come out of this application. So we believe that this is appropriate. Just to point out something; you can see the applicants property here, the area here, to the south of the application area if it did develop into residential in the future, you can see that this is where the activity will take place. This is a natural flood plain, flood way which obviously there can be no development. So the closest that anything that could impact would be down here. You can see this is very distant, and to think that you could have an impact from a kennel indoors from here to down here I don't believe is reasonable. The church property, I don't believe shows up on this aerial. It is up on Rock Road. It is a little further away. Again, I don't believe there will be any negative impact to a church, by an indoor kennel operating in an agricultural environment this far away. The applicant is here to give you a little more detail about the type of operation he will have. We believe this is an appropriate application for this area, and we believe it could coexist in an agricultural environment without any issues. Thank you.

HENTZEN Are there any questions? Name and address please.

BEVERLY RUBLE 9031 E. 87th St. South I just wanted to give you some overview of how we ended up here today. We have been an active member of our community having served on the volunteer Sheriff Reserves, Police Department; we have spent 7-years supporting those activities as captains and lieutenants of the Mounted Patrol. While we were on the reserves, we pledged our lives and our own personal property and spent countless hours so that our community could be safe and secure. We continue to be involved in our community, the 4-H Project, and the Girl Scouts. Currently we are project leaders in a 4-H Project for dogs, and my daughter is a member of that. I have tried to get her to like horses, but she, or her love was not there. She has become involved with the dogs in the 4-H and the AKC. I might add she is going to the fair this weekend. If you happened to be there on Saturday, come and watch our kids. They are really pretty neat. Anyway, my husband and I, believe our community records speak for themselves. We have a house that is 75-feet from the building that we are going to be housing the dogs in. We enjoy country life, the quietness, serenity, we are not trying to change that in any way. We still want to continue to enjoy our property. We have lived there 18-years. I would just like to say I don't believe that this is going to be a noise issue because of the way we are handling this. Thank you.

HENTZEN Thank you, before you leave, let me ask if there are any questions for this Commission, if not lets go on to your husband.

GORDON RUBLE, 9031 E. 87th Street South, applicant. A little bit of the operation of the Doggie Daycare, it is to bring the dog in, drop it off, socialize it, very much the same way you have child care where you drop off your child and let them play all day. It is like Gregg said, it is a totally indoor facility, and as soon as we get the other building built, the dogs will not be out at all. The noise is not an issue. We went again and checked to see if there was any validity to the noise problem with the Mulvane Clinic. I videotaped the Mulvane Clinic on several occasions, and there was zip as far as dog noises concerned. A lot of road noise, but no dog noises. Also I went to Doggie Playground, videotaped it there in their parking lot. There wasn't any dog noise, and just to make sure that there were dogs in there, I walked in and asked them if I could videotape in there, and they said it was not a problem, and there were dogs there. I went back to the compliant area, videotaped again to see if you could hear any dog noise, there was no dog noise, but there was plenty of cattle noise, bugling and caring on. It would have drowned out any dog noise going. I have videotape if you are interested. I was going to show it, but I didn't want to bore you with it. It is seven minutes of rural settings. Any questions?

HENTZEN Any questions of this speaker? Okay, Ray.

WARREN There has been concern about the doggie waste. How is that taken care of?

RUBLE We are setting up a drainage system, and I have already checked at the County and had them come out and look at our waste system. He said that the lagoon itself is adequate to take care of it, and that he would pass that by the supervisor and make sure of that. He didn't have any heartburn with it. He has not gotten back with me, so I take it for granted that the waste would be okay in the lagoon. It is a 50-gallon.

GAROFALO My question is on this material that was handed out. It has four or five names here. Can you give me an idea where these people are adjacent to your property?

RUBLE (showing up on aerial). The Hines are here, and Marianne Slagle is here. We didn't have time to get any other contacted for signatures.

GAROFALO I have another question that doesn't relate, being a dog lover myself. These buildings, are they going to be air-conditioned?

RUBLE Yes, they are all climate controlled; they are going to live better than most of us.

HENTZEN Any other questions of the speaker? Thank you.

FERRIS Mr. Chair, just to summarize. Dog kennels; some dog kennels in the past have received negative notoriety. These folks are family and animal or dog lovers. They are going to operate this near their home. They will be accredited by the American Boarding Kennel Association; with strict rigid rules. They will comply with all of those guidelines, which are not easy to comply with, and this will be an indoor facility. It will be of top nature. There is one that you probably didn't know about down the road here, off of 1st Street, in a residential area that has no complaints; no issues, and no problems in the City of Wichita. I believe that in this rural environment this will fit in an easier way. If there are any questions, we will be happy to answer those at this time.

HENTZEN Thank you. I think we will; yes, John go ahead.

MCKAY I would like him to review again the changes that they are going to make from the staff recommendations for my benefit.

FERRIS We would like Number 5 changed to 15-years, and that is very unusual as you are aware. Most Conditional Uses have no time period, but we are willing to agree to a time commitment. We would like Number 6 changed to 60 dogs. We are not opposing the change from, not accepting or dropping off of dogs from 8:00 p.m. to 6:00 a.m.

MCKAY That number 9.

FERRIS That is number 9, and there was another one that staff suggested, and we have no problem with. I don't know where that was, the sound proofing, we have no problem with that either. Item 8.

HENTZEN Is there anyone in the audience wanting to speak for or against this proposal? Lets see how many want to speak on this item? Okay lets go. Please give us your name and address for the record, and say if you are in favor or opposed and then tell us why.

JAMES A. SUMNER, 201 E. Derby KS, I represent 1st Christian Church in Derby. Many of the issues that we raised in the Derby Planning Commission meeting have been made public here today. We still have a concern about the noise because a promise is one thing and actuality is another. We have testimonies come into us about other kennels; a couple of them in Mulvane, where these people have lived next to them testify that they have heard noise. We are going to build a church down here on the southwest corner of this section. The last thing we want to hear is dog noise during service. If they are going to take these dogs out from 8:00 to 10:00 to clean those kennels, and that is when we have our service. We have service all morning. It wouldn't be a good thing for us to hear any noise on Sunday morning. The other days the preacher would be the one to hear it. And we will have to listen to his complaints. The lagoon was an issue with us. We are not convinced that that lagoon with 50 or 60 dogs dumping waste into there is going to be a good thing. We are worried about it. We are concerned about it. Another issue that came up during our Derby meeting was the reporting of violations. It worries us that there is not going to be an inspection on this facility. When we asked how complaints were going to be handled, we will have to wait until we have complaints, and then we will resolve the issues. That put us to asking questions. If people complain about the facility, they have the privilege of taking this before a Commission, and get a ruling against the property. Now they have a 15-year investment down there that they are sitting on, and these complaints might put an end to that. I think this kennel property is awfully close to a populated area. You have a little map that I handed out to you, it is not as good, but this is sketch of the developed areas. We are going to sell off most of this property, property that we don't put the church on, to a developer and he will develop it. If the City is moving, and I realize moving north and east, but I think as you can see that this section is large, and I think the pressure is going to be on the rest of this land to develop. We are concerned about that, and so we are resistant to this kennel location. We wish it were further out. That is our position. Thank you.

HENTZEN Let me ask if there are any questions before you leave. Mr. Barfield.

BARFIELD What is the distance between your church and the purposed location for the kennel?

SUMNER You know I had that measurement; it was around 700-feet from his closest corner to our closest corner; approximately 700-feet.

HENTZEN Any other questions? Thank you sir.

CHRISTY RAFFERTY, 712 N. Porter. I am a veterinarian, let me back up and say I am for this proposal. I have been Beverly and Gordon's veterinarian for 7 ½ years. I have been their acquaintance for about 17 years, so far as I can count. I am in favor of this proposal for several reasons. Number 1 being, I think, they are good candidates to be putting this proposal together. I can personally vouch for their integrity, and for their concern for their community, and I don't vouch for that lightly. I have my professional liability also. Having said that, there is an overwhelming demand for this type of facility. If any of you have pets, and you have ever tried to acquire boarding facilities or daycare facilities, holidays or outside that time, you know it is hard to do. We routinely turn a lot of people away at the clinic that I am currently working at. I should mention I was previously an associate at the Mulvane Animal Clinic, which is in the same vicinity. It is just a little ways south of where we are talking about right now, south and slightly south and west, so I do have a lot of experience in that area also. With the demand, if we don't have the kennel here, there is going to be one elsewhere, and I would say it is going to be near a residential area no matter what you do. You have residences, and then you have the businesses that serve those residences close by. Leading to my second point. If it were I representing the County or the City of Derby, I would rather see the money staying in the community, and helping to support the community than going elsewhere. One of the problems I know, in the past, has been the condition of the roads in that area. It has been pretty pathetic, a lot of complaints from residents in that area. Having a kennel facility in this area supporting the area with taxes, and things like that can do nothing but improve it for them. The noise, I have to say I can't see this being a big issue. There would be less traffic for this kennel than there is for the Mulvane Animal Clinic. At the Mulvane Animal Clinic you constantly have people coming in and out all day long. Even so, most of the noise you are dealing with there is coming from the traffic, and not from dogs barking. I was a resident of Derby up until a year ago. I still run with a group in Derby who routinely run that route that comes down

south, and comes into Mulvane into Highway 53, and then comes north up through Mulvane, by Mulvane Animal Clinic, on Rock Road by these properties in question to the corner of 95th and Rock, and on up. I have been by there at times on Sunday mornings when I know that they are cleaning the kennels because I used to do it myself, and we just don't hear any noise. I can't really say that we don't hear much noise. I say we don't hear any noise when we are running by, this is just on foot, there is nothing to covering up any barking that we might hear. The lagoon, I certainly don't know much about construction or about waste facilities, but I will say that the lagoon that is present at the Mulvane Animal Clinic, it's surprising to me with the size that you don't smell anything. During the two years that I was employed as an associate veterinarian at that clinic, never once did I notice any smell whatsoever from that lagoon. I would like to say for issues for the community to bring money in, and to speak for Beverly and Gordon as being as good managers of facilities of this type, I wholeheartedly support it. I would ask for your support.

HENTZEN Is there any questions from this speaker? If not, thank you very much. Is there anyone else wanting to speak on this case for or against?

DALE MILLER Just one quick thing, there is a requirement that if any residences are located within 200 feet, they are supposed to have their outdoor facility that far away. I think if you look at the site plan, there is a potential that their facility is within the 200-foot separation, and so if you decide to approve it, then you need to actually acknowledge that you are granting a waiver of that. I forgot to mention that during the staff report.

MARION HUNTER, 8815 E. 87th Street South. I needed a lawyer, seeing now I didn't have one, I didn't feel it was the thing for me to do right then. These are my neighbors. I am here to represent myself, and my neighbor to the northwest of my property, and my home. She has lived there, I think, for over 50-years. I have lived in the Derby area for over 42-years, but where I live now, I have lived there for over 25-years. It was zoned residential when we moved there, and that was one of our desires to go out there. I do oppose it. I do feel like I need to, for one thing, on the map, I don't know how I was forgotten, but I will show you where I live and why. This is their property. I live right over here. This, for some reason, was forgotten. I have lived there for 25-years, over 25. My husband and I, we raised our 4 children, not in this particular spot but for the remainder until they were grown. I don't know how I could be forgotten. I know that different one, as you can see, we have been out there for quite a while. I live next to the area, and this is my neighbor, and this is my neighbor's back yard here. This is the Ruble's. So that is where I live. This is the neighbor I am representing. She lives over here. She is an older woman, and she is quite a bit older than me. I am representing her. I think this will devalue my land, and my home. Also, the sound will be something that I will have to live with. I have grandchildren. I have 9 of them. They come over to our home, and presently I am paying this off. I have not completely paid my home off. My husband is dead, but we didn't have mortgage insurance, but I got out there, and I am trying to pay it off. I am doing a pretty good job, and I do feel like I have been a good neighbor. I have tried to be. My house is not sound proof, especially on the east side. So I hear lots of sounds. We did have a lot of trees in there, and the trees had a disease. I spent quite a bit of money getting those out as nearly as I could. I had a man come and do it for about \$2,500.00, and that is a lot of money and time. They still didn't get all of them, and they are dying in different places. That is one reason the insulation is not quite a good. I am going to have to put something in there if I see if this would go through. I was at the Derby Planning Commission. I did attend that. I don't know why I was forgotten. That is okay, I am here and I am grateful. Dogs do make noises and sounds; we all know that. I like animals but I don't think I want that many as neighbors. I say my son will one day buy this. He has four children or I will turn it over to him. I am presently 71, and I hope I live long enough to turn it over to him. He has one son that will definitely need a place to live. His son has cerebral palsy, and he is six years old now. My children all attended the Derby School, these children are home taught, and yet my little cerebral palsy child goes to the Derby School. The smells, I am sorry I don't agree with you on the smells. I know what animals do, and they do smell. The smell is bad, I don't think I have to tell anybody that. All four legged animals, we are to care for them and I do. The restroom facilities, you are going to have to have them for the people that come out there to see their dogs that are nervous, afraid or tired. I know what it is to have dogs in a little day care center. At first I did think this to be only for a day, a small operation, and this is what I was told. I am surprised when I heard there was going to be 50 to 60 dogs. That is quite a leap from just a few. The cars on the road, that road, have you been out there lately any of you? Pretty bad at times, it is kind of neat right now, but my car is fifteen years old, and I don't know if it can take many more jilts. It does when the winter comes and the mud, it is just bad. I do not impose on my neighbors. They are good people, I know this, but I am good people too, and my children want to come back here. It will devalue our land, and I am pretty sure if it. This is not the time or the place to do this, and that is my opinion. Thank you very much.

HENTZEN Thank you. Are there any questions to this speaker?

BLAKE How close are you to this kennel?

HUNTER I would be 300-feet approximately, maybe. I can show you. It is right up here, just across the way, about 200 feet. The trees are gone. I will have to plant new trees. Any other questions? Thank you

HENTZEN Is there anyone else here to speak on this subject? Tell us who you are, and where you live, please.

ROD HEIM, 8919 E. 87th Street South. My property joins the Rubles directly. I am this small plot just to the west. I am in favor of this. I know the Rubles, and I know the area. I understand Mrs. Hunter's concerns. They are important, and they are being addressed. My property alone provides a great deal of natural insulation. I have the tall pine trees, and the tall cedars. The noise from the cars going down the road is there all the time. One point that I would like to make as we all look at the aerial, this area is rural, is agricultural. The sounds that I hear in the middle of the night are the trains from Mulvane and Derby. I hear the animals out there, the wild animals bugling and a few coyote. The cars going down the road make a great deal of noise. The neighbors have dogs, and occasionally barking. My concerns about the noise have been addressed. I do know the Rubles, and I have spent some time with him, and he is insulated and he is concerned about the neighbors. He is very concerned. I believe that this is going to be a good business. I believe those are the proper people to run it, and I believe where neighbor complaints are going to be addressed. My property alone probably takes up 300-feet to the west. He is probably 100-feet back. I don't believe that any other developments that were mentioned earlier along Rock Road, they are ½ mile to 2/3's of a mile, it is well more than 1,000-feet for any of those concerns. The big issue, and I believe it is being addressed, and I don't believe it is an issue, and that is Marion's concern for the noise. It is understandable the way she feels but personally, I just don't share that concern right now.

HENTZEN Thank you. Any questions for this gentleman? If not, thank you. Is there anyone else? Gregg, you have rebuttal time.

FERRIS Thank you Mr. Chairman, I will be brief. I just want to clarify a couple of points. First of all, it was stated that some other kennels in the area make noise. These are not all indoor kennels. These are kennels that have outdoor storage as well and indoor, so they are not to be compared, it is apples and oranges. The lagoon issue, the lagoon must be approved by the County. That will be taken care of. We will make sure, and if you want to make that a condition, we have no problem. If you want to add a condition that the lagoon has to be approved by the County, we know it has to be that way anyway. This will be inspected on a regular basis; at least once a year by the State, but also by the Federal Government. Kennels have different restrictions. They may not have County inspections, but they will have federal inspections, so I don't believe that is an issue. This is, the last speaker did mention the fact that this is agricultural. They can keep 10 dogs in a pen outside if they wanted, of their own dogs. You can have cows. You can have all types of animals. This is an agricultural area, and that is why the Conditional Use is the only thing that is required. So I think it is important to remember that this is the type of area that you have. Finally, the church said they might be a few 100-feet away. I will show you where the church property is, and you can see it is about 4-tenths of a mile from property line to property line. This would be the church property over here. This is our property over here. We have not the intention of interfering with the church. We don't believe at that distance anybody inside of the church could hear something that is inside of another building over a ½ mile away, and that is to their property line. They are not going to put the church on the property line. With that, I will not take up any more of your time. I know you have had long discussions on a few other things that were a little different, so I would be glad to answer any questions.

HENTZEN Mr. Wells.

WELLS What is the existing construction of the building? Is that a metal building or what, I can't tell?

FERRIS Yes, it is a metal building. It currently has 8-inch insulation. So it is already insulated, and it will be climate controlled. From their standpoint, they want it to be well insulated just from a cost standpoint.

BARFIELD Mr. Chairman?

HENTZEN Yes sir, Mr. Barfield.

BARFIELD Gregg, I want to ask you this. There was some discussion about the time or the length of time these dogs will be outside. I just want to be sure that I understand you correctly, you and the applicant, do I understand that you are in the process of constructing a new building, and once the new building is constructed there will be no outside time for these dogs. Am I correct?

FERRIS That is correct. There is one mistake in your pictures that were drawn. The architect did not understand that there will be an enclosure between both buildings, so the dogs will not even have to go outside to go from one building to the other. The picture I believe shows separate buildings. They will be separate, but they will be attached so that there will not be dogs outside at any time.

BARFIELD Final question, what is the timetable for the construction of that building?

FERRIS You are looking at the first quarter of next year. Is that correct?

HENTZEN Okay, thank you.

FERRIS Thank you.

HENTZEN Well, I believe we are ready to bring it back to the board. Yes sir.

BARFIELD I am ready to make a motion if there are no further comments.

HENTZEN Well, let's make the motion, and if we get it seconded, we can discuss it.

BARFIELD I will make the motion. First, I do have one question for Dale. Dale in talking about the 200-foot, how many residences are within that 200-foot?

MILLER I am only aware of one, but I won't say that there aren't more. The applicant has indicated that he has measured, and the one resident that we thought was within 200-feet is greater than 200-feet. Jess, when he wrote the staff report, did the calculation off an aerial and how accurate that is, remains to be seen. We are only aware of one.

MOTION: Approve, subject to staff recommendations, and the changes discussed regarding Item #5 granting a 15 year time period, Item #6 permitting 60 dogs, Item #9 prohibiting dog pick up or drop off between the hours from 8:00 p.m. to 6:00 a.m., and waiving the 200-foot distance from residences .

BLAKE How about the sound insulation?

BARFIELD I understood him to say that the building was already sound insulated.

BISHOP That would be something that would be defined with what the Derby County Commission wanted. So just putting the words in there probably wouldn't hurt.

BARFIELD And adding the sound insulation into #8.

AMENDED MOTION: Approve, subject to staff recommendations, and the changes discussed regarding Item #5 granting a 15 year time period, Item #6 permitting 60 dogs, Item #8 requiring sound insulated buildings, Item

#9 prohibiting dog pick up or drop off between the hours from 8:00 p.m. to 6:00 a.m., and waiving the 200-foot distance from residences.

BARFIELD moved, **BLAKE** seconded the motion.

HENTZEN Okay I have a motion, and do I have a second?

BLAKE We already have a 2nd to the motion.

HENTZEN Yes sir. Harold?

WARNER On #5, are you eliminating the extended two-year period with the approval by the administrator, are we eliminating that?

BARFIELD Yes.

HENTZEN Any other discussion about the motion? If not, lets take a vote.

I am going to register a no vote and I want to tell you why, because we are doing something that, the Derby people did not want done. I am talking about the Planning Commission, and I take very serious that I have to overcome an individual city's intention. That is the only reason I said no. I just did not want to do that.

VOTE ON THE MOTION: Approved (11-1) **HENTZEN** opposed

6. **CUP2002-00034 (DP71 Amendment #2)** Dick's Sporting Goods c/o Jeff Tarris (owner/applicant); Austin Miller, Inc., c/o Kim Edgington (agent) request Amendment to Towne West Square Community Unit Plan to increase the maximum height of building signs on property described as:

Lot 9, Towne West Square 2nd Addition, Wichita, Sedgwick County, Kansas. Generally located south of Maple and east of I-235.

BACKGROUND: The applicant is requesting an amendment pertaining to signage for Parcel 1 of Towne West Square CUP (DP-71), which is located south of Maple and east of I-235 on 4.33 acres zoned "LC" Limited Commercial. Per General Provision #2, the signage for Parcel 1 is governed by the standard provisions of the Sign Code. At issue is the Sign Code's maximum 30-foot height for building signs on property zoned "LC" Limited Commercial. The applicant has requested to amend to General Provision #2 to allow two 38.5-foot high building signs for Dick's Sporting Goods as illustrated on the attached elevation renderings.

The character of the surrounding area is dominated by retail uses in Towne West Square and surrounding properties. The nearest residential uses are located approximately 600 feet north of the subject property across Maple. The subject property fronts onto the I-235 freeway and is separated from residential uses to the west by both the freeway and the Big Ditch.

CASE HISTORY: A zone change (Z-0970) from "AA" One Family to "B" Multiple Family was recommended for denial by the MAPC and withdrawn by the applicant on May 10, 1973. A zone change (Z-1598) from "AA" One Family to "E" Light Industrial was approved by the City Council on May 14, 1974 subject to platting the property. The applicant subsequently withdrew the request and requested a zone change (Z-1700) from "AA" One Family to "LC" Limited Commercial, which became effective on April 20, 1978 when the property was platted as Towne West Square Addition. The Towne West Square CUP (DP-71) was originally adopted July 15, 1975 and was amended to reduce floor area, change permitted uses, change parcel boundaries, and modify access controls on May 10, 1977. The subject property was replatted as Lot 9, Towne West Square 2nd Addition on April 17, 1979.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC"	Retail
SOUTH:	"LC"	Retail
EAST:	"LC"	Retail
WEST:	R.O.W.	I-235, Big Ditch

PUBLIC SERVICES: The applicant's request to amend the signage provisions of the CUP will not impact public services.

CONFORMANCE TO PLANS/POLICIES: The Unified Zoning Code permits an amendment to a CUP to allow signage that is not in conformance with the City's Sign Code. The Unified Zoning Code states that the purpose of a CUP is to provide well planned and well organized developments with a character that is appropriate to the neighborhood. The Unified Zoning Code further states that waivers of development standards through a CUP must meet the purpose of the CUP overlay district.

RECOMMENDATION: Building signs at a height of 30 feet or less consistently have been used by retail businesses in the "LC" Limited Commercial district throughout the community. It is the opinion of planning staff that constructing building parapets that exceed the top of the building wall by 15 feet or more exclusively for signage is unnecessary and leads to buildings with a semblance of a billboard on top of each business. Planning staff has recommended in the past that the MAPC deny requests for such signage and suggested that allowing such signage would establish a precedent. This has been borne out by several requests in the past year for building signs that exceed 30 feet in height for retail businesses in the "LC" district. Since all of these requests have been approved, it is the opinion of planning staff that these approvals have created an "informal policy" position that make it difficult for staff to continue to recommend denial. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. Two building signs at a maximum height of 38.5 feet shall be permitted on Lot 9, Towne West Square 2nd Addition.
2. The two 38.5-foot high building signs shall be the only signs permitted on the north and west building elevations.
3. The two 38.5-foot high building signs shall be limited to a maximum size of 400 square feet each.
4. The south building elevation shall be limited to a single sign that shall not exceed 180 square feet in size or 24 feet in height.
5. All signage shall be installed in general conformance with the approved elevation renderings.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is dominated by retail uses in Towne West Square and surrounding properties. The nearest residential uses are located approximately 600 feet north of the subject property across Maple. All of the properties surrounding the subject property are zoned "LC" Limited Commercial or are in right-of-way approximately 1,750 in width. The proposed signage amendment is consistent with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "LC" Limited Commercial and is suitable for the retail uses proposed by the applicant. Building signs are limited to 30-feet in height in the "LC" Limited Commercial zoning district, and such a building sign height is suitable for retail development on the subject property. However, for properties such as the subject property where buildings are located along a freeway with significant building setbacks and separation from residential uses, increased building sign heights can be suitable.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The subject property is separated from non-residential uses by 600 feet. Detrimental impacts on nearby property are not anticipated.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Unified Zoning Code permits an amendment to a CUP to allow signage that is not in conformance with the City's Sign Code. The Unified Zoning Code states that the purpose of a CUP is to provide well planned and well organized developments with a character that is appropriate to the neighborhood. The Unified Zoning Code further states that waivers of development standards through a CUP must meet the purpose of the CUP overlay district. The proposed waiver of the sign development standards is appropriate to character of the neighborhood.

MOTION: Approve, subject to staff comments, and citing the findings in their report.

MARNELL moved, **GAROFALO** seconded the motion, and it carried (12-0).

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7. **HPC2002-00085** Stephen and Belyndae Johanningsmeier request The Robins Residence be designated in the Wichita Register of Historic Places as a local landmark.

BACKGROUND: The applicants are requesting the house located at 3333 S. Broadway be designated as a Wichita Historic Landmark. This structure, built in 1899, was the first house built south of the Arkansas River in Sedgwick County and the home of George R. Robbins. Robbins was a pioneer Wichitan, homesteading this location in 1869. Prior to constructing the existing two story brick building, he lived in a sod house, a log cabin, and a modest frame structure on the same site.

The bricks used for constructing this building are bricks hand made and fired in St. Louis, originally intended for the John Bright College. This college was the precursor of Friends University. The brick was ordered and newspaper accounts of 1887 reported the bricks had been delivered and were sitting on the Rock Island docks. For some reason the college was not built, although designs by Wichita architect, C. W. Terry had been completed. George Robbins purchased the brick and built the house at 3333 S. Broadway.

The zoning surrounding the application area consists of "GC" – General Commercial and "LI" – Limited Industrial. Nearby properties are developed with commercial uses.

This site is located on the west side of Broadway, south of Patterson Street. Broadway is a four-lane two-way arterial street, and Patterson Street is a two-way local street.

Findings of significance of the Historic Preservation Board are based on evaluation criteria established in Chapter 2.12, Code of the City of Wichita. This structure is significant to the early history of Sedgwick County and the City of Wichita. The Robbins House is currently identified in the Undesignated Historic Resource List adopted by City Council in September 1998.

CASE HISTORY: The application area is a .89 acre unplatted tract of land located 150 feet south of Patterson Street on the west side of Broadway.

ADJACENT ZONING AND LAND USE:

NORTH: "GC" General Commercial
SOUTH: "GC" General Commercial
EAST: "GC" General Commercial
WEST: "GC" General Commercial and "LI" Limited Industrial

PUBLIC SERVICES: Municipal water and sewer services are available. Access is via Broadway. The traffic count on S. Broadway south of 31st street is just under 16,000 ADT in 2001. The Wichita CIP has no proposed improvements for this segment of S. Broadway.

CONFORMANCE TO PLANS/POLICIES: The adopted "Land Use Guide" of the 2030 Comprehensive Plan and 2001 Historic Preservation Plan indicates that the Wichita City Council has adopted a preservation ordinance that states "the protection, enhancement, preservation and use of historic landmarks is a public necessity." And furthermore, the Historic Preservation Board is to research and nominate historic properties for possible designation as landmarks.

RECOMMENDATION: Based upon approval by the Historic Preservation Board at their June 10, 2002 regularly scheduled meeting, planning staff recommends that the request be APPROVED and is submitting this application for MAPC approval.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area was rezoned from "RR" to "GC" in March 1958 under a blanket re-zoning initiated by the City and County. Although the zoning changed, the use has remained residential. Adjacent properties are developed with commercial uses that are screened from the property.
2. The suitability of the subject property for the uses to which it has been restricted: The historic designation will not affect the current usage of the property as the underlying "GC" zoning will remain as is. Wichita Landmark designation will require design review for only the said property, not adjacent properties.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: There should be no detrimental affect as the land use on the application site does not change, and additional reviews of adjoining properties are not triggered with landmark approval.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: This request is in conformance with the Comprehensive Plan for Historic Preservation which specifies that the Historic Preservation Board is to nominate deserving properties for possible designation as landmarks. This property meets the criteria established for landmark designation.
5. Impact of the proposed development on community facilities: No impacts have been identified.

MOTION: Approve, subject to staff comments, and citing the findings in their report.

MARNELL moved, **GAROFALO** seconded the motion, and it carried (12-0).

8. **CON2002-00045** Steven Motors (applicant) Thomas A. or John D. Krebs c/o Sixty – Four Hundred LLC (owner) request a Conditional Use to permit vehicle sales on property described as:

Lot 1 and 2, Englewood 2nd Addition, Wichita, Sedgwick County, Kansas. Generally located southeast corner of Kellogg and Woodlawn, 6405 E. Kellogg

BACKGROUND: The applicant is requesting a Conditional Use to allow a new & used car lot on Lots 1, 2, 3 (excluding the north 10-foot of the east 60-feet) & 4 (excluding the north 10-feet of the west 90-feet), Englewood 2nd Addition. The site is approximately 1.8 acres in size and is zoned "LC" Limited Commercial. The site is located on the southeast corner of Kellogg and Woodlawn, 6405 E Kellogg. The Unified Zoning Code defines a new or used car lot as "outdoor vehicle and equipment sales" which requires a Conditional Use when located in the "LC" district.

The south side of the Kellogg Street frontage, from Oliver to Rock Road, is commercial in character with vehicle sales lots being the dominant businesses. The area immediately east of the site is zoned "LC" Limited Commercial and has 3 car sales lots. The zoning of the property to the west, across Woodlawn, is "LC" Limited Commercial, with the property developed as 2 small retail strips. The zoning to the south, across a paved alley, is "B" Multi-family and the property is developed with 4-plexes. The property to the north, across Kellogg, is in the City of Eastborough and is developed as a park and single-family residential.

The applicant submitted the attached "Site Plan," which indicates that the applicant proposes to basically keep the subject property as it now is. An existing 22,405 square foot commercial building will remain on the subject property. The applicant proposes to keep the existing lighting plus add some. The site plan does not distinguish what is proposed or existing lighting, nor does it give their type or height. The applicant proposes two locations for signs rather than the existing one. The size and type of the signs are not given. The two existing access drives, one to Woodlawn and the other to the Kellogg frontage road, are proposed to remain. No landscaping or screening is proposed for the site. The applicant proposes 36 customer – employee parking spaces and 97 display spaces. Per the UZC the parking requirement would be 45 spaces for the 22,404 square-foot building (if used as part of the vehicle sales lot), plus 2 spaces for the first 10,000 square-feet of lot used for sales (lot used for sales is 33,345 square-feet) and 1 space for each 10,000 square-feet of the lot area used for sales, display or storage for a total of 50 required parking spaces.

To limit the impact of the proposal and to bring the proposal into compliance with existing regulations, planning staff recommends conditions of approval regarding access, screening, landscaping, and operational standards. These conditions are described in the "Recommendation" section of this report.

CASE HISTORY: The property is platted as part of the Englewood 2nd Addition, which was recorded May 16, 1952.

ADJACENT ZONING AND LAND USE:

NORTH:	Eastborough	Park & Single Family Residential
SOUTH:	"B" Multi-Family	4-plex residential
EAST:	"LC" Limited Commercial Retail Strip	
WEST:	"LC" Limited Commercial	Car sales lots

PUBLIC SERVICES: This site has direct access to Woodlawn, a four-lane arterial street and indirect access to Kellogg, a 6-7 lane arterial. Average Daily Trips at the Kellogg – Woodlawn intersection are 13,144 on the north side, 11,583 ADT's on the south side, 46,118 ADT's on the east side and 45,753 ADT's on the west side. Municipal water and sewer services are currently provided to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto sales lots should be guided to areas containing similar uses, and away from neighborhood commercial areas.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request be **APPROVED**, subject to the following conditions:

1. The site shall be developed and operated in compliance with all applicable regulations, including Section III.D.6.x. of the Unified Zoning Code shall be met.
2. Parking spaces for employees and customers shall be provided on the property as required by the Unified Zoning Code and in conformance with the standards established by the City Traffic Engineer. The parking spaces shall be marked and designated for employees and customers and shall not be used for display or storage of vehicles for sale, unless the vehicle is driven by an employee.
3. A landscaped street yard and landscape buffer in conformance with the requirements of the Landscape Ordinance shall be provided on the property and shall comply with a landscape plan approved by the Planning Director.
4. Traffic is requesting an extension of an approved median strip to go to the site's current Woodlawn access, which would create a right in – right out access off and onto Woodlawn from the site. Traffic has noted that there is a controlled left turn lane off of Kellogg onto the south Kellogg frontage which allows southbound Woodlawn traffic a safer opportunity for access onto the site. The improvements scheduled for this section of Kellogg, include designing the Kellogg – Woodlawn intersection to be similar to the Kellogg – Oliver intersection, which allows for controlled left turns off of Woodlawn onto the Kellogg frontage road and use of the site's existing access onto the Kellogg frontage road.
5. A revised site plan reflecting the conditions of approval (including Section III.D.6.x. of the Unified Zoning Code) shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
6. The site shall be developed in general conformance with the approved site plan. All improvements shown on the approved site plan shall be completed within one year of approval of the revised site plan by the Planning Director.
7. Any new lighting installed on the site shall match the existing poles in height, style and color.
8. Signage shall be limited to the two signs shown on the site plan.
9. After a review of the development and upon appropriate findings, any violation of the conditions of approval will allow the Conditional Use to be declared null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The Kellogg Street frontage in this area is commercial in character with vehicle sales lots being the dominant business in the vicinity. Zoning along the south Kellogg Street frontage is "LC" Limited Commercial and the properties are developed with commercial uses. The proposed car sales lot is consistent with the commercial zoning, uses, and character of the area.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial, with vacant commercial space and is apparently suitable for the commercial uses to which it has been restricted. Outdoor vehicle and equipment sales uses may be permitted in the "LC" district with a Conditional Use and should be guided to areas, such as the location of the subject property, where similar uses exist.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The screening, lighting, and compatibility standards of the Unified Zoning Code; the landscaped street yard and buffer requirements of the Landscape Ordinance; and the recommended conditions of approval should limit noise, lighting, and other activity from adversely impacting residential areas to the south and east and should ensure attractive and orderly redevelopment along a major community thoroughfare.

4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. This site is located along Kellogg Street, and the recommended conditions of approval have provisions, which limit noise, lighting, and other adverse impacts on surrounding residential areas. The Commercial Locational Guidelines also recommend that auto sales lots should be guided to areas containing similar uses, and away from neighborhood commercial areas. This site is located along Kellogg Street in an area where auto sales uses already exist.
5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.

BILL LONGNECKER Planning Staff presented staff recommendation.

BARFIELD How will the reconstruction of Kellogg, in that area, affect this access road?

LONGNECKER The reconstruction of Kellogg, and the Kellogg and Woodlawn intersection, from my understanding, will be similar at what you see at Oliver and Kellogg. You will have a controlled intersection with controlled left hand turn onto the street frontage, after they come over to the middle. The way the redesign of this intersection with Kellogg will function is that traffic will be coming off the frontage road here, directed to Woodlawn and it will go over Kellogg. It will be controlled, and there will be a lighted intersection here, and at the time, that will allow people to turn onto this frontage road here which would allow them to go right into the existing entrance onto the side of the Kellogg frontage.

BARFIELD Is parking allowed there?

LONGNECKER Is parking allowed on the frontage? I did see parking on the frontage. I do not know if it is allowed.

BARFIELD That is my concern, a big concern that I have.

BISHOP Mr. Longnecker, clarify for me, would it be somewhat like Oliver? Would there be a traffic light for each intersection on either side of Kellogg?

LONGNECKER From my understanding, Mrs. Bishop, there would be a traffic light here that would allow traffic to be either for a right hand turn or a left hand turn. And, that there would also be a traffic light here prior to the traffic getting to this frontage road, and that would control traffic across the road onto Woodlawn, or to make a left or right hand turn.

BISHOP I have a question please. For item #4, that is currently a shopping center site. That is a shopping center. There used to be a flower shop on the corner.

LONGNECKER Here?

BISHOP The current site.

LONGNECKER This used to be Albert's Chinese Restaurant.

BISHOP No, further to the east. That entrance there is a real danger because traffic going north on Woodlawn blocks left hand access onto that parking lot. People stop in order to make a left hand turn, and traffic backs up all the way into the Kellogg intersection, and through the traffic light. So I thought the median was a gem dandy idea, what happened?

LONGNECKER Well, upon further consultation with the traffic engineers, they had advised the Planning Staff that this controlled intersection, the redesign of this intersection, will allow access, and prevent the backing up of Woodlawn because of the way the access is allowed, here, here, and here, on back to the light.

BISHOP It seems like it is moving closer, unless there is something that I do not understand. I don't see how it could do that. It seems to me that it would exacerbate.

LONGNECKER I will be glad to get some more information on that for you, Mrs. Bishop.

HENTZEN Mr. Chairman

LINDEBAK I can respond. The Kellogg freeway project was designed with a median that comes to the south. With the way that the signalization is being established, and with you now being able to make left turns there under a signalized control, it is anticipated that if the people from the north would utilize the signal as a safe location to make their turn. Those who are south bound would make the turn onto the frontage road make the right turns right into the site. With the new signal system, and taking Kellogg out of the picture, it is anticipated that there wouldn't be any need to extend that south. And in fact, if you did continue the median to the south; because we had evaluated that, our concern was that anybody exiting that site, and wanting to go south; it would then force them to go north to the frontage road, and take the frontage road to about ½ mile to the east before they could loop back. Or they would have to go clear over to Armor, and come back and loop around on the whole system, and we thought there was probably more public need by leaving the median coming down to about 190-feet from the intersection. So it does have a median that comes down.

BISHOP Would there be a turn lane?

LINDEBAK Yes, it is being constructed as a left turn lane to accommodate people who are heading northerly wanting to turn.

BISHOP Does it have enough stacking room? That is an enormous...

LINDEBAK Yes, there will be that to accommodate those folks.

HENTZEN Any other questions?

BARFIELD Yes, I have some serious concerns about that. Is that access road going to remain a two-way?

LINDEBAK It is one-way east bound, and there would not be any parking when you convert it over it would be carrying the through traffic.

HENTZEN Any other questions? Thank you. We are ready for the applicant.

KIM EDGINGTON Thank you, Mr. Chairman, member of the Commission, Kim Edgington representing Austin Miller representing the applicant on this case. First, we do agree with all or most of staff comments. We would like to address just a few items. Item #3 has to do with the landscaping requirement for this site. As you can see, this is a completely developed site. There is no existing opportunity to install landscaping. Steven Motors does intend to develop this property. This would be a new dealership lot. It is going to be designed to an aesthetically pleasing lot, but we just don't have the opportunity or the viability to meet those requirements. So we are asking that requirement #3 be waived, and that has been a standard practice that the Planning Commission has established on existing, developed properties. We don't feel that that is out of character with what the Planning Commission has done on many instances in the past. The other issue we would like to address is #7, regarding lighting, and that goes back the fact that Steven Motor group will be redeveloping this site. The lighting that is on this property now is probably much older than I am, and it is a little hard to find light standards that match those. So they do intend to install all new lighting on the premises that will be much nicer than what is there now. Then, we do agree with #8 changing that to meeting the sign code. That would be all of our comments. Mr. Harold Johnson, the General Manager for Steven Motors group, is in the audience, and he could answer any operational questions that I may not be capable of, and I would be glad to stand for any questions that you might have.

HENTZEN Kim I am a going to ask you one question. On the lighting situation, are you saying that you need to put in new lighting system?

EDGINGTON Yes, the lighting on the site is very inadequate, at this point, and so all the lighting would be replaced now.

HENTZEN I asked you the wrong question I understood that, I am sorry, let me ask you about the sign. The next item #8, the two signs show in the site plans.

EDGINGTON Staff has recommended, and we are in agreement with changing that requirement to read that all signs installed on the site shall meet sign code.

HENTZEN Okay. Anybody else? Okay, John.

MCKAY Kim, you want to waive the landscape completely; is that correct?

EDGINGTON Well, in consideration of how the site is built, at this point, yes we are. We would be, or there are some opportunities to do some median planting; and that is something that we would consider as part of the development plan.

LINDEBAK It is my understanding that the waiver of those landscape requirements can be waived by the Superintendent of Central Inspection, as well from the Director of Planning, and that they can set cost caps. I think there are those provisions.

EDGINGTON Yes, we would just ask that the Commission make that recommendation.

LINDEBAK Yes, they can make the recommendation, but that consideration is there.

EDGINGTON Thank you.

BARFIELD Mr. Chairman.

HENTZEN Mr. Barfield, do you have a question?

BARFIELD I don't have a question, but I have a statement. As I stated earlier, I am concerned about traffic flow on that access. Now, as we saw in the photo, there is parking, wither it is allowed or not, and when you have an automobile dealership sitting on that corner, you are going to have some jokers that are going to come there, and park to get out and look at those cars. Now, if this landscaping will serve in any small way to deter on-street parking, I am in favor of it. That is my statement.

HENTZEN Anybody else with questions? Yes, Kim, does Mr. Johnson have anything he wants to say to us?

EDGINGTON I will let Mr. Johnson address the board. Thank you very much.

HAROLD JOHNSON Thank you, I live in Wichita, Kansas, and I represent the Steven Motors Group. I want to address two questions and concerns that were raised here. This is an aerial photograph of the site. First of all, the concerns that she addressed about Woodlawn, the traffic does back up now on Woodlawn Street like you said, but once Kellogg goes under this, there will only be stacking of Woodlawn traffic. It won't be stacking Woodlawn traffic waiting to cross Kellogg. That will elevate some of that

immediate traffic. On landscaping, as you see, this is concrete parking; there is really no place to put landscaping. I don't think landscaping is really a concern or people parking there. Right now, it is two-lane, and they do park there, but when this Kellogg construction is done, this access road will be similar to this access road by Scotch and Sirloin, and the Hotels down there. There is not parking on that, I assume.

WELLS That is right. Is there landscaping on it?

HENTZEN No. Mike Lindebak, is this going to go under like it does on Oliver?

LINDEBAK Yes, Kellogg goes under. In this case, we will have as an off ramp to the west of Woodlawn, and we will have another off ramp on the east of Woodlawn. Thus, reducing the amount of traffic that will be going through Woodlawn and to the frontage road intersection.

HENTZEN Those service roads on both sides, I think the speed limit is about 30 miles or 20 miles an hour. It is not like the 60 mile an hour traffic going by here. Okay, any thing else you want to tell us. Thank you. Is there any one else? We have had the staff, the applicant. Is there anyone here wanting to speak for or against this proposal? I guess we are ready for the Commission to vote. What do you want to do?

MCKAY Mr. Chairman?

HENTZEN Yes

MCKAY I would like to speak on the landscaping, Item #3. Going down Kellogg, if you look on the south side or any place where a car dealership is at, there aren't any landscaping requirements, and there is no landscaping period. I don't know what the distance is, but it can't be that much for them to put landscaping in, at this point and time. Especially, when the majority of this area for the main part of the traffic is going to be on Kellogg going underneath,

MOTION: Approve, subject to staff comments, with the exception that the landscape requirement as made in condition #3 be removed, that the extension of the median strip on Woodlawn as made in condition #4 be removed, that the lighting requirements as made in condition #7 be changed to "shall comply with Section IV-B.4 of the UZC" and that signage, as referred to on condition #8, on the site shall be limited to what is permitted in the "LC" Limited Commercial zoning district.

MCKAY moved, **ANDERSON** seconded the motion, and it carried (10-2) **BISHOP** and **BARFIELD** opposed.

HENTZEN Now we are ready for #9.

9. **CON2002-00046** Ridge Port Development, LLC, Kevin Mullen, Jay Russell (president/manager, respectively); Baughman Company, P.A., c/o Russ Ewy (agent) request Conditional Use to allow "Mining and Quarrying", sand extraction from an existing lake on property described as:

Reserve C, Ridge Port Addition, Wichita, Sedgwick County, Kansas, except that part replatted in Ridge Port 4th Addition, Wichita, Sedgwick County, Kansas, together with Lot 1, Block G and Reserve A, Ridge Port North 3rd Addition, Wichita, Sedgwick County, Kansas. Generally located North of 29th Street North and east of Ridge Road.

BACKGROUND: The applicant requests a Conditional Use to allow "Mining and Quarrying" for the extraction of sand from an existing lake. Extracted sand will be piped west, under an existing bridge on Ridge Road, where a similar sand extraction Conditional Use currently exists. The applicant intends to deepen the existing lake on the subject site, use some of the sand as fill for projects on the west side of Ridge, and sell some of the extracted sand. The 71.5-acre application area is located north of 29th Street North and east of Ridge Road, is primarily zoned "SF-5" with a small portion of "TF-3" zoning, and was platted primarily as reserve areas of the Ridge Port Addition, the Ridge Port 4th Addition, and the Ridge Port North 3rd Addition. The applicant has not indicated the intended depth of excavation, or the intended volume of sand extraction. The applicant indicates that extraction is to occur within the existing lake boundary. The application area currently has only a boat ramp access from 29th, and no access from Ridge; the applicant does not anticipate needing access as the extracted sand is to be pumped to another site on the west side of Ridge.

The applicant indicates that after the Conditional Use is no longer needed, the site will remain a residential area amenity lake, as it exists today. North of the application area, along Ridge, is property zoned "LC" and "GO" and developed with strip retail, and additional sand pit lakes. South of the application area is an "LI" zoned railroad corridor, several industrial uses along Ridge, and additional sand pit lakes. East of the application area is the "SF-5" zoned Ridge Port Addition, with many residential lots backing onto the application area lake. West of the application area is the "TF-3" zoned Ridge Port 4th Addition, and west of Ridge Road is the "LI" zoned Ridge Port Commercial Park addition – which is currently used for sand extraction and stockpiling.

CASE HISTORY: The application area was platted as a part of the Ridge Port Addition, Ridge Port North 3rd Addition, and the Ridge Port 4th Addition, recorded in 1998, 2001, and 2002 respectively.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC", "GO"	retail, undeveloped, sand pit lakes
SOUTH:	"LI"	railroad corridor, industrial uses, sand pit lakes
EAST:	"SF-5"	single family residential
WEST:	"TF-3", "LI"	single and two-family residential, sand extraction and stockpiling

PUBLIC SERVICES: The property is located along Ridge Road, 29th Street North, and 34th Street North. At the application area, Ridge is a paved, four-lane section line arterial with a 75-foot half-width right of way. No street projects are currently included in the C.I.P for this section of Ridge; the *2030 Transportation Plan* designates this section of Ridge to remain a four-lane arterial. Currently, there is no access from Ridge to the application area. At the application area, 29th is a two-lane, paved section line road with a 50-foot half-width right of way. The C.I.P plans for a widening of this section of 29th to four lanes starting in 2008, existing right of way is adequate for that purpose. A boat ramp currently provides access from 29th to the application area, the boat ramp access remains closed by the use of a chain; the applicant does not anticipate a need to regularly access the application area. 34th Street North borders the application area to the north, it is a residential collector with a half-width right of way of 37 feet, there is no access to the application area from 34th. As the sand extraction will be pumped to the west side of Ridge Road, the applicant has no need for access to the application area, except for infrequent maintenance of the pumping equipment. Therefore, the application area should not generate any traffic to the site or on the surrounding roads. The application area has access to all city services.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this property as "Low Density Residential", consistent with its current "SF-5" zoning.

The Unified Zoning Code lists "Mining or Quarrying" as a Conditional Use in the "SF-5" zoning district. The Zoning Code lists 23 conditions with which "Mining or Quarrying" should comply; these conditions exist for public safety, and to mitigate any negative effects the extraction may have on surrounding properties. Not all of these conditions are applicable to the proposed sand extraction, as the site is a private lake. Should the Planning Commission recommend modifications to one or more of the Unified Zoning Code conditions for the requested Conditional Use, the request must then be forwarded to the Governing Body for final action.

RECOMMENDATION: With the proper conditions in place, this proposal should not have a detrimental affect on the surrounding properties. The Conditional Use for sand extraction should improve the lake as an amenity for the surrounding homeowners. As the existing lake will only be deepened, increasing the lake's overall capacity but not surface area, this Conditional Use should have no detrimental drainage effects on surrounding land. The conditions suggested below should mitigate potential negative impacts caused by this Conditional Use. Required permits should further ensure the safe operation of the Conditional Use.

For these reasons and based on information available prior to the public hearings, Staff recommends that the Conditional Use request be **APPROVED**, subject to the following conditions:

1. The extraction operation on the site shall proceed in accordance with the site plan to be approved by the Planning Commission. The perimeter of the excavation shall conform to the size and shape indicated on the approved site plan.
2. All sand extracted from the site shall be pumped, by use of an electric powered pump, under the existing bridge on Ridge Road, to a site west of Ridge Road which is permitted for sand extraction by CU-293.
3. Equipment on the site shall not project noise and/or light onto any surrounding properties which exceeds the noise and/or light spillage limits of existing City codes or compatibility standards.
4. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the city legal counsel, prior to the commencement of any extraction providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
5. The storage of equipment or stockpiling of sand or overburden is not permitted on the site.
6. Access to the site shall be for maintenance purposes only, and shall take place only from the boat ramp access point on 29th Street North. The 29th Street North boat ramp access point shall remain closed when not in use.
7. The Conditional Use for the sand extraction operation shall be valid for a period of 5 years. The applicant may apply to the Planning Director for an additional two years by an administrative adjustment.
8. The applicant shall make the site available to the Wichita Health Department for the installation and management of groundwater monitoring wells.
9. The applicant shall surround the site with signs and/or barriers to prevent trespassing.
10. The applicant shall mark any equipment projecting above the surface of the lake with safety markings to ensure the safety of private lake users.
11. All applicable local, state, and federal permits necessary for the extraction operation shall be obtained and maintained.
12. If operations have not begun within one year of approval, the Conditional Use shall be null and void.
13. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The properties surrounding the application area are zoned "SF-5", "TF-3", "LC", and "LI". The site will continue to be used as a private lake; therefore, the Conditional Use should not negatively affect the character of the neighborhood.

2. The suitability of the subject property for the uses to which it has been restricted: The application area could continue to be used as a private lake as zoned, without the requested Conditional Use.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The conditions provided in the Unified Zoning Code for this Conditional Use, and those recommended in this report, should prevent any detrimental affect on nearby property. These conditions work to mitigate any negative light, noise, or environmental effects. Deepening of the existing lake will only increase it's capacity, and should not affect runoff or drainage onto the surrounding properties.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *Comprehensive Plan* does not specifically address "sand extraction"; however, the plan does recognize the uniqueness of mining and extractive resources (e.g. sand, gravel, clay soils, etc.). The Plan recommends that the extraction use location be compatible with the built and natural environment. The land use guide identifies this area as designated for "Low Density Residential"; as a private lake for surrounding homeowners, the requested use is consistent with this designation.

5. Impact of the proposed development on community facilities: Traffic to and from the requested Conditional Use at this location will be for infrequent maintenance only, and should have no affect on the surrounding roads. Deepening of the existing lake will only increase it's capacity, and should not affect runoff or drainage on the surrounding streets.

MCKAY I think we only had one person who had a question on that, and he just had a question. Rather than going through the full blown presentation, if we could just have that person come up and ask his question.

HENTZEN I think that is a good suggestion.

MCKAY He can talk to us about what his concerns are, and maybe we can answer without going through the whole thing.

HENTZEN Instead of going through the whole thing, we are going to ask them what their feelings are.

MCKAY What their concerns are, and we can address them.

HENTZEN Please give us the name of one of you and your address.

DERRICK SCHRIVER I live at the property in the Ridge Port Development, 3009 Ridge Port Court. Our question is, what is in the plans for the south end of the lake? There have been several issues over the last year and a half to two years on that area to the south of the lake, right there. There have been several issues with the flood management, and also Barefoot Bay, on the south side of the bridge about blocking the water flow through there. This is a natural stream that goes north. Our question mainly has to do with what was in store for that area. What plans they had.

MRS. SCHRIVER Based on what the plat looks like versus what it looks like in reality is a different thing. We are interested in finding out, why do you approve things, and then do not hold developers to the original plat plans.

DERRICK SCHRIVER The developer had been approved to complete the lake, and conform it to a certain static level. That static level could be held with weir or by natural means, if the stream is allowed to run through. The City Flood Water Management said it needed to be a permanent structure, and not just a bunch of rocks holding the water back. There was a lawsuit several years ago with Barefoot Bay because there was a temporary structure, and it washed through, and it flooded their development. Right now there is a temporary structure. There again our concern is, what is going to be done to get rid of that temporary structure per our conversation; there was several ways to deal with that.

HENTZEN Bill, would you put back up the slide where we got all the property lines, keep going. There, where do you folks live on that map?

DERRICK SCHRIVER Right down here.

HENTZEN Right there. And where we are talking about is lower on the map.

DERRICK SCHRIVER This area here is Barefoot Bay. The area they plan on excavating is right up through here. Apparently there is nothing planned down here. Years ago that area was blocked off, and a big Halloween flood several years ago washed the rocks, and they broke down. That has been temporally blocked off again.

MRS. SCHRIVER You can see by the pictures that it does not match.

HENTZEN Does anybody have any further questions from these two?

MCKAY The applicant is the only one we can ask questions about this. I would still like to hear from the applicant.

RUSS EWY Russ Ewy, Baughman Company, agent for the applicant. I did have a chance to speak with the Schriver's about their concerns, and as I did mention to them, I was ill prepared to discuss what was on file with the drainage people downstairs, in Engineering. But, what we produced as far as the site plan, and what you have in your materials is a drawing that shows not only the reserve area, which is in dark gray, but the static water level that detention facility which is at 1320 sea level. That outline of that lake is the maximum excavation area. We are not going to excavate beyond the perimeter of that lake as it stands now. We are simply trying to excavate for depth on that lake, as it stands now, plain and simple. There will be no sand plant facilities located in the reserves; it will be all-upstream in the existing plant as the staff report indicates. This is a simple request in our estimation. The

issues that were discussed previously, I think they sound like they have merit, but there is really a separate arena for that, or for their concerns. I think that we have been trying to make ourselves available to answer some of their questions outside of what we are looking for here today. I will stand for any questions that you may have.

HENTZEN Do you have any problems with any of the requirements?

EWY I think, as Dale mentioned previously, he and I met today, before the meeting to clarify condition #9 which talks about providing barriers and signs against trespassing, which I think may be a little over board. I think we all share in the concern, that we will have sand pumping equipment on this lake; and we want to make sure that that is readily identifiable to people who are accessing the lake, and we want those people who live in this association to be aware of that activity. But, as far as making people pay dues, it almost makes it sound like the homeowners in this development may be considered trespassers according to that particular condition. I think we are on the same frequency, as far as what we are to be providing, as far as the pumping activity.

HENTZEN Are there any questions for the applicant? Thank you. Anybody in the audience that has not spoken on this wish too? Let's bring it back to the commission. What is your pleasure?

BISHOP I have a question for staff. In an instance like where the Strifers believe there has been deviation from the plat that is on the record, who is responsible for compliance?

MILLER I was referring them to Vicki, since she reviews the drainage plans. She would know what was approved with the plat. Between her and Chris Carrier, they would be able to identify if there is something that hasn't been complied with, or if it was not in conformance with the adopted drainage plan.

BISHOP It almost sounded like they are somewhat getting the run around, so to speak, if Vicky sends them to us.

MILLER Vicki is the one who approves the drainage plan, and she would be able to show them what the approved plan is. There is not requirement for them to dig identically, according to the plans. They just can't exceed or modify it to where it would be a hazard. Even though the shape is not the same as what is on the drawing or on the approved plan, as long as it meets the drainage requirements; that is all that is required.

BISHOP Step 1 is to determine wither or not it does meet it. Step 2, if it doesn't or is not enforced, who is in charge of that? Is it never done?

LINDEBAK What happens when those developments occur, if there are petitions for improvements, those petitions are enacted. So, I would imagine if there were a part of a plan that required a permanent weir, there would have been a petition to that effect. Again, if it were not a petition to that effect, that would make me think that there was no requirement of a permanent weir. This was considered to be a pit pond, and a pit pond would not necessarily require a permanent weir. It would just require that the opening where it discharges at the bridge be kept at an adequate size. I think Vicky can answer those questions if the plan called for a permanent weir.

MS. SCHRIVERS But if it isn't, then our next step is to see what the City tells me to do?

ANDERSON I would move that we approve the Conditional-Use permit based on the recommendation of the staff report subject to changing Item #9, as discussed today dealing with signage and fencing.

MOTION: To approve, subject to staff comments, amending Item 9 with respect to signage and fencing, and citing the findings in their report.

ANDERSON moved, **WARREN** seconded the motion, and it carried (11-1) **BLAKE** opposed.

10. **CON2002-00043** – Ernie and Juanita Doyan and L.E. Mott (owner/applicant); Ferris Consulting c/o Ferris Consulting c/o Greg Ferris (agent) request Conditional Use to for outdoor vehicle and equipment sales on property described as:

The South 11 feet of Lot 3, all of Lots 5 and 7, Tosh's Subdivision of Lot 6, Zimmerly's Addition to Wichita, Kansas and the West 1/2 of Lots 7 and 8, Zimmerly's Addition, Wichita, Sedgwick County, Kansas. Generally located South of Boston and east of Broadway (1506-1528 S. Broadway).

BACKGROUND: The applicant is requesting a Conditional Use to allow outdoor vehicle and equipment sales on a one acre platted tract located south of Boston and east of Broadway (1506-1528 S. Broadway). The subject property is zoned "LC" Limited Commercial. Outdoor vehicle and equipment sales may be permitted with a Conditional Use in the "LC" Limited Commercial zoning district.

The northern portion of the subject property was approved for a Conditional Use (CON2000-00010) for outdoor vehicle and equipment sales on May 25, 2000. The applicant is proposing to expand the used car lot onto the adjacent property to the south that is currently developed with two single-family residences and a vehicle repair business. The applicant proposes to raze the two single-family residences and to continue to operate the vehicle repair business in conjunction with the used car lot.

The character of the neighborhood is that of mixed-use development consisting of single-family and multi-family residential development and various commercial uses, including two used car lots within one block of the site. The zoning of the property to the north is "GC" General Commercial. The zoning of the properties to the south and west is "LC" Limited Commercial. The zoning of the properties to the east is "MF-29" Multi-Family. The property across Boston to the north is developed with a vehicle repair

business. The adjacent property to the south is developed with a strip commercial center. The adjacent properties to the east are developed with single-family residences. The property across Broadway to the west is developed with a pawnshop and a sign shop.

The applicant has submitted a site plan showing the proposed use of the subject property. The site plan shows a 2,900 square foot sales/office building, a 3,800 square foot vehicle repair building, and 12,000 square feet of vehicle display area. The site plan shows eight employee/customer parking spaces; however, the Unified Zoning Code requires 17 parking spaces, including one space that is accessible to people with disabilities. The site plan shows a six foot high wood screening fence along the east property line between the sales/office building and the vehicle repair building; however, the site plan does not indicate the manner in which the screening required by the Unified Zoning Code will be provided south of the vehicle repair building. The site plan shows a landscaped street yard as required by the Landscape Ordinance; however, the location of the street yard is partially behind the wall line of the vehicle repair building, which will require a partial landscape waiver by the Planning Director. The site plan shows landscape buffering along the east property line; however, the Landscape Ordinance requires eight shade trees and only three shade trees are provided, which will require a partial landscape waiver by the Planning Director. The site plan shows the dedication of 12.5 feet of right-of-way for Broadway to bring the street up to 50-feet of half-street right-of-way per the Subdivision Regulations. The site plan shows that the two drives to the existing single-family residences will be closed.

CASE HISTORY: A portion of the subject property is platted as part of Tosh's Subdivision of Lot 6 in Zimmerly's Addition, which was recorded on February 14, 1887. Another portion of the subject property is platted as part of Zimmerly's Addition, which was recorded June 26, 1883. The northern portion of the subject property was approved for a Conditional Use (CON2000-00010) for outdoor vehicle and equipment sales on May 25, 2000.

ADJACENT ZONING AND LAND USE:

NORTH:	"GC"	Vehicle repair
SOUTH:	"LC"	Strip commercial center
EAST:	"MF-29"	Single Family
WEST:	"LC"	Pawnshop and sign shop

PUBLIC SERVICES: This subject property has access to Broadway, a four-lane arterial with current traffic volumes of approximately 11,000 vehicles per day. The 2030 Transportation Plan estimates that traffic volumes on Broadway will remain approximately 11,000 vehicles per day. Municipal water and sewer services are currently provided to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. All requirements of Section III.D.6.x. (attached) of the Unified Zoning Code shall be met.
2. The applicant shall dedicate by separate instrument 12.5 additional feet of street right-of-way along the property's Broadway frontage within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
3. e Broadway access drives to 1516 and 1522 S. Broadway shall be closed, and the applicant shall provide a guarantee for closure of these drives in a form suitable to the City Engineer within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable. The applicant shall dedicate by separate instrument complete access control except for two openings along the property's Broadway frontage within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
4. Parking spaces for employees and customers shall be provided on the property as required by the Unified Zoning Code and in conformance with the standards established by the City Traffic Engineer. The parking spaces shall be marked and designated for employees and customers and shall not be used for display or storage of vehicles for sale, unless the vehicle is driven by an employee. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business unless additional parking spaces for such businesses are provided per a revised site plan approved by the Planning Director.
5. A landscaped street yard and landscape buffer shall be provided and maintained on the property that shall comply with a landscape plan approved by the Planning Director that includes a partial waiver of the landscape requirements to permit the landscaped street yard to be located behind the building wall line and to permit three buffer trees instead of eight.
6. A revised site plan reflecting the conditions of approval (including Section III.D.6.x. of the Unified Zoning Code) shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.

7. The site shall be developed in general conformance with the approved site plan and landscape plan. All improvements shown on the approved site plan and landscape plan shall be completed within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
8. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
9. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.
10. Approval of this Conditional Use shall supersede and render null and void the Conditional Use granted for the subject property by Conditional Use Resolution No. 2000-00010.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the neighborhood is that of mixed-use development consisting of single-family and multi-family residential development and various commercial uses including used car sales. Most of the property along Broadway is zoned "LC" Limited Commercial or "GC" General Commercial, with residential zoning limited to areas along the streets east and west of Broadway. The proposed used car lot is consistent with the zoning, uses, and character of the area.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial. The property is apparently suitable for commercial uses to which it has been restricted; however, used car sales is an established use in the area and can be suitable for the subject property if developed according to the recommended conditions of approval.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the recommended conditions of approval which would limit signage, lighting, noise, and display area practices from adversely impacting nearby property.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. This site is located along Broadway, and the recommended conditions of approval have provisions which limit noise, lighting, and other adverse impacts. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. This site is located along Broadway in an area where auto-related commercial uses already exist.
5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities if the recommended additional street right-of-way and access controls are provided along Broadway. Not providing the recommended additional street right-of-way and access controls will hinder the City's ability to provide a roadway that is of sufficient capacity to safely carry future traffic volumes.

MOTION: Approve, subject to staff comments, and citing the findings in their report.

MARNELL moved, **GAROFALO** seconded the motion, and it carried (12-0).

11. **CON2002-00037** - RRM Properties, LLC, c/o Ronald J. Cornejo, City of Wichita, c/o John Philbrick, KAPLAN, McMillan & Harris, c/o Charles Hill request a Conditional Use Amendment to CU-425 to extend time for construction and demolition landfill on property described as:

That part of Government Lot 1, in Section 10, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas lying east of the Wichita Chisholm Creek Diversion Canal, EXCEPT that part lying northeasterly of the A.T. & S.F. Railroad Right-of-Way, and EXCEPT that part described as beginning at the point of intersection of the north line of the NE 1/4 of said Section 10, with the west right-of-way line of said A.T. & S.F. Railroad; thence west along the north line of said NE 1/4, 431.6 feet more or less to the east line of the Wichita Chisholm Creek Diversion Canal Right-of-Way; thence southeasterly along the east line of said Drainage Canal Right-of-Way a distance of 646.5 feet more or less to the center line of the abandoned bed of the Chisholm Creek; thence northeasterly, easterly, and southeasterly, along the meanderings of the center line of said abandoned Chisholm Creek to a point 680 feet south of the north line of said NE 1/4; thence east parallel with the north line of said NE 1/4, 248.34 feet more or less to a point on the westerly Right-of-Way line of said A.T. & S.F. Railroad; thence northwesterly along the westerly Right-of-Way line of said railroad to the point of beginning, and EXCEPT a tract of land in the NE 1/4 of Section 10, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, further described as follows: Beginning at a point on the westerly Right-of-Way line of the A.T. & S.F. Railroad N 89 degrees 47' W 1526.15 feet and S 37 degrees 31' East 859.98 feet from the Northeast corner of the said NE 1/4 of said Section 10; thence along said westerly Right-of-Way line S 37 degrees 31' East 1499.21 feet to the east line of said NE 1/4; thence along said east line S 02 degrees 46' West 242.34 feet to the centerline of Chisholm Creek; thence along said centerline the following bearings and distances North 26 degrees 46' West 46.59 feet, North 13 degrees 15' West 213.50 feet, North 43 degrees 01' West 349.10 feet, North 28 degrees 53' West 472.42 feet,

North 49 degrees 23' West 417.83 feet, South 25 degrees 00' West 138.42 feet, South 76 degrees 24' West 96.58 feet, North 31 degrees 05' West 209.45 feet, North 05 degrees 10' West 194.00 feet, North 47 degrees 00' West 25.48 feet; thence South 89 degrees 47' East 248.34 feet to the point of beginning. TOGETHER WITH those portions of Government Lots 1 and 2 of Section 11, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, lying westerly of a line drawn parallel and concentric with and distant 50.0 feet westerly, as measured at right angles and radially from The Burlington Northern and Santa Fe Railway Company's (formerly The Atchinson, Topeka and Santa Fe Railway Company) Main Track centerline, as now located and constructed and lying north of the following described line: Commencing at the intersection of the north line of said Lot 2 with a line which lies 50 feet westerly of, measured normally distant from the center line of the present main track of the Railway Company; thence in a southerly direction along said line which lies 50 feet westerly of, normally distant from and parallel to said center line of the present main track of the Railway Company, a distance of 550.8 feet to the true point of beginning; thence North 80 degrees 00' West, 137.6 feet; thence North 05 degrees 15' West, 60.25 feet; thence West to the left bank of the Arkansas River. Generally located Southwest of 31st Street South and K-15 Highway.

BILL LONGNECKER, Planning Staff Presented staff recommendations for denial of this conditional use to extend time for the construction and demolition landfill.

Coulter out at 4:00

BLAKE Has there been any environmental studies on this area?

LONGNECKER I believe there has been on this site.

MILLER We have somebody in the audience that can speak specifically to what the local Health Department has done.

LONGNECKER An excellent suggestion, could we have that member of that Department come forward please?

MARK BRADSHAW, Supervisor of the Environmental Maintenance Section of the Environmental Health Department. I can't say that I am an expert witness because my section deals primarily with residential property. However, I have been told that we have done some water sampling in that area over a period of time and at this point there has been no problem with the water underneath that site, and we have been working closely with Central Inspection on fairly regular inspections of this site. Other than complaints, which we have had a number of complaints over the last few years of dust being a major problem for the community in that area around there, for the most part they have complied; at least with the concerns when they have been asked to. Cornejo has at least complied or attempted to comply with the requests that we have made of them. There have been continuous concerns that come in from time to time, most of which I have referred to our air quality section to go out and take a look at that issue. I don't have all the details of what they have come up with on that. Any questions?

HENTZEN Any other questions?

GAROFALO I have questions for Bill, Planning Staff? Do I understand this correctly, that the KDHE will not renew the permit, is that correct? Can they operate without a permit?

LONGNECKER They could not operate without that permit. That is correct.

GAROFALO So what are we doing with this?

LONGNECKER This is a Conditional Use, and one of the conditions was a time frame. The applicant has made application to have that extension. That is where we step in.

GAROFALO I understand that if the KDHE is saying that they are not going to renew the permit, which expires on 2003, then how could we extend it if we wanted to?

MILLER They would be viewed as two separate actions. The applicant has the right to come and ask for the current Conditional Use to be amended. If he should not get the permit or all necessary permits to operate, then he still would not be able to operate. But, at least he would have taken care of the things that were underlying his local control.

HENTZEN Any other questions?

BISHOP I have a question of staff. If this were approved, and the permit was still not issued, would it be possible for the applicant to use the Conditional Use for anything else, or is a Conditional-Use specifically for a C & D Landfill?

LONGNECKER Yes, this is specifically for a C & D Landfill.

HENTZEN At this location?

LONGNECKER Yes.

MILLER They would be able to do other base uses if the site is zoned "LI". They would be able to do "LI" uses, assuming that they are out of the floodway, and they could get building permits. The base zoning would still be there.

BISHOP But in other words, the Conditional Use would be of no use to them.

BLAKE I have a study on that area from the Environmental Protection Agency. I want this put on the record. Does Spring Creek, Four or Five, run through that C & D dump?

LONGNECKER Not that I am aware of.

HENTZEN I guess we are ready for the applicant.

BOB KAPLAN On behalf of Cornejo. Let me do a little bit of housekeeping. I think I will backup and answer some questions as we go through this because I think we have some misconceptions of what we are doing here. At the County the other day, Dale Miller told me that I needed to find something new to complain about. I kind of thought that over and I think that Dale may have a point. It seems like the last several cases I continue to bring up the same subject and issues and bring to you the same complaints that I have had over the last several cases. I thought I am going to think over what my good friend told me, but then I read the staff report. I am telling you Commissioners we are doing it again today. I do have the same protest that I have had in the past. In a few minutes that I have, I want to break my presentation down into several aspects. For one, I do want to talk about the staff report. I want to answer the questions from Commissioners Bishop and Garofalo, so that we can get that accurate. I want to talk about where we are, and I want to talk about where we are going. Let me talk first of all about the staff's recommendation for denial. If you will read your reports, the staff gave you two reasons for denial. Remember staff approved it previously, and this is an extension of a previously approved Conditional Use. This is not a new case. We just need additional time, and I am going to tell you why. The denial was based on the KDHE denial of a proposed C & D at 3500 North West Street. I see that the Ritchie people are here and have their paperwork. I don't know much about the Ritchie property at 3500 North West Street, but I am going to tell you that number one, this Commission approved this. It was approved, where theirs got denied is because the Kansas Department of Health and Environment did not issue a permit. It wasn't the Metropolitan Area Planning Commission that denied this, the MAPC approved this. There was no protest at the MAPC meeting according to the minutes by the City of Wichita, or by anybody else at that time, as far as the permit was concerned. Now, that North West Street record, I don't know everything that is in that record, but I am going to tell you Commissioners that record is not my record. What you have before you today is a request for extension to allow us to finish something that we started in conjunction with the City of Wichita. We do not own this ground. We own a small piece of it. This is City owned property. Remember the old Boeing Hills property down at K-15 and 31st Street was a motorcycle off road vehicle problem area, and the wastewater treatment plant was prior to that discharging their sludge into that area. All of that sludge was coming out of that wastewater treatment facility. That was a sludge pit. It had a lot of bumps and hills and people enjoyed taking their 4-wheel vehicles and motorcycles down those. We went to the City and leased the ground from the City with the ideal of putting in a C & D in that area, and the City leased it to us. We got a Conditional Use approved by the Planning Commission, by the City Council, and the property was leased subject to KDHE issuing a permit. That is the first problem I ran into and the reason I need the extension. You have a fact sheet in that little booklet. It includes one letter from the owner of the largest residential area at K-15, a trailer park, which is the biggest trailer park down there. That gentleman appreciates what we have done, and he wrote a letter in support. He couldn't be here today or I would have had him here. We took that property, and you gave what was amounted to six years and one month. We went to KDHE, at KDHE we lost like twenty months; it is on that fact sheet. It took nearly two years getting through KDHE, and the reason that it took two years to get through KDHE is that we went through all of the environmental review. We went through all of the Arkansas River review and through all of the environmental review. I asked M.S. Mitchell to come because Mitchell was a large part of the exercise at that time. He has a big book with him and Mitchell and the Engineer at that time was Baughman and Company. We spend almost two years of our six years getting our permit and it left us four years of our six, and we didn't get done. Now the other thing that you are being told is that KDHE won't issue a permit. I don't know that they won't. I know that we got a letter on the subject, but we have not applied. We haven't applied for a KDHE renewal, yet. That is not even on the table until April of 2003. Now I am being told that I am not going to be able to get that permit. I guess as a lawyer if you tell me before I present the case that the case is lost, I suppose I should go to work somewhere like Dillons because I am not practicing law anymore. I don't know that KDHE is not going to issue that permit. I know what that letter says the permit renewal is seven or eight months away, and that is why we started early. The fact of the matter is, if you want to make this very simplistic, if KDHE does not issue a permit, everything we talk about here today is moot. We don't own the ground, so we can't use it for anything else. It belongs to the City and Commissioner Bishop you are right, it is site specific. We either have a C & D or we have nothing. We don't own the property and quite frankly there is nobody going to build anything on that property anyway. I told you it is a sludge pit. You step in the wrong place, and you will go in over your head. You can't put a foundation there. What the City asked us to do was work with the Park Board. This Board here is on our end project. That is a linear riverside park to which we have contractually and financially committed, and that is the end result, if you let us finish the C & D. Ron has committed money to the project; he has committed his labor and material to the project, to turn this into the linear park the rendering of what you see on the board. We are contractually committed to the City to finish that park when that C & D is done. Now the problem is we didn't get done. There are a lot of reasons for that, Ron is here and he can speak to it. We didn't get it finished; we are maybe forty or fifty percent of C & D. If KDHE doesn't issue the permit, you can't walk off and leave it. We are going to have to do something and obviously Ron is not going to walk off and leave it, nobody is suggesting it. We are going to have to straighten it out, fix it up, do something. Then, I don't know what you are going to do with it. The best proposal, since we are in the middle of it, is give us the time you think is appropriate to finish it. If you don't give me enough time, then I guess I will have to come back and talk to you again. We have asked for until 2010 and will it take seven years, I don't know. I had asked for more time in 1997, and I got cut back to six years. KDHE took away two years of it, and I ended up with four. I wanted ten in the first place, which I didn't get and maybe you don't want to extend it to seven and that is your prerogative, but I would like to finish it up. We have a contract with the City and the Park Board to do it. As far as using it for something else, I know it is in the staff report that they say they will. This is a covenant which was filed by the City, I didn't give you my book, I have a big huge book, I didn't pass it out, I didn't think you needed it. This covenant is a recorded covenant, but I will give it to you. The City has filed a covenant on this ground, and it is going to be a public park. That is all it is going to be. They have made it a matter of record. It will be a public park if you let Mr. Cornejo finish his job. That is all in the world we are asking for. I know the neighbors are upset, I can't say that anybody likes a C & D, and I don't expect people to come up here and support a C & D. The dust problem, Ron does have a rock crusher there, he does have a rock crusher to the north. Fortunately, we are not here to talk about the rock crushing operation. The rock crushing operation does create dust. but that is not the subject of this meeting.

HENTZEN Mr. Kaplan do you need more time?

KAPLAN Another minute or two. I know better than to put on a lawyers hat up here; I know better to not be adversarial. I know that is not the approach, but it is interesting to me that the City of Wichita has their C & D on the river. The one recently opened since Brooks closed and the City of Wichita C & D on the river seems to be perfectly palpable. There is nothing wrong with that, but this one seems to be an issue because of the river. I am not criticizing, I am not debating, and I am not looking for an argument, but I don't understand the City of Wichita C & D on the river and our C & D on the river, which has been there six years, and ours is a problem. What I am asking you to do isto talk to Mr. Cornejo, if you want to. If you want to talk to Mr. Mitchell, he is here. If you want more information, I have got it, but I would like to finish it up. I don't see how we can leave it in the status in which it is in. If you don't approve it, we still have to do something. We can't leave it the way it is, and Ron is a responsible individual that won't do it, you know it and I know it. Can I answer questions at this time?

BARFIELD Mr. Kaplan, I have just a bit of a problem on what you expect to gain when it clearly states here that according to KDHE this site is not eligible for renewal for a permit.

KAPLAN Commissioner Barfield, it is not eligible today. The flow of the Arkansas River hasn't changed, why was it eligible in 1998? When they licensed it, nothing has changed. It was eligible then, today it is not eligible. There is a real issue, and it is a legal issue. It is not an issue for this Commission, and it is not an issue for me today. There is a real issue over the navigability of the Arkansas River. There are those that say it is navigable, the United States Army Core of Engineers, which I would like to think has a little expertise in this area says it is not navigable. The navigability of the Arkansas River stops at the Port of Catoosa at Tulsa, north of Tulsa. This is not a navigable river, according to the court. You can take either side of that issue that you like, and that is an issue that is going to come up in April when we go to Topeka, when we go to KDHE. I know we are going to have an issue over that, but it is not a different issue than we had in 1997 or 1998. I guess I am just vain enough to believe that KDHE will approve it subject to whatever we can work out in the way of conditions and restrictions. We are not polluting anything, we have never polluted anything, and that is why Mr. Mitchell is here. We spent two years doing that drill. So what I am asking you to do is please don't assume that I have lost the KDHE case even before I have filed the application, that is really not fair. If you do approve it subject to a KDHE permit, and I don't get the permit, what have you lost? If I do get the permit, then everything is extensively okay. That is my position, and I am entitled to have a turn to at least try. I think you deprive me of the opportunity to even try, if you shut the door at this point. There is not any valid reason for doing it. It is a KDHE exercise, and let me take it up with them.

HENTZEN I am going to move this along because we may loose a quorum here about 5:00. I do want to ask if there is anybody here that wants to speak on this subject? I will tell you we are going to hear you, but you better be fast when you do it because I don't want to sit here and have the same thing mentioned by all five or six of you. We had the staff, we had the applicant, and so we are ready to hear from the people out there that want to talk about it.

JOHN KEMP President of the KP Association, I am back again this time, and I have one question that I would like to ask or I have one scenario I would like to put to you. Mr. Kaplan, this is going to be a park, the whole scenario is going to be a park. We have the river on one side, and you have the railroad track on the other. You have Cornejo landfill here, and you have Sutherland Company here. What I would like to know is, what child is going to cross the railroad track or are you going to put an access across the railroad track to this beautified park? Is the Park Board going to build a bridge across this river to this place? That is all I want you to take into consideration. They told us this is going to be beautified; this is going to be a park.

HENTZEN Let me ask you, are you opposing this proposal?

KEMP Yes. We will eat the dust in our neighborhood from his trucks entering his landfill. I have talked to Mr. Cornejo, and I have talked to his brother. I have called that company and said would you please do what you said you were going to do and wet the place down so we can see our front doors, that is all I asked. Consider this and you will see why taxpayers in the City of Wichita would like a little help in eliminating dust in our neighborhood.

ALAN CHAPEL I am acting as agent for C & D Recycler of Kansas. We have a packet of information of multiple correspondences from state and federal agencies concerning the original permit application to this commission, and then some additional correspondences. I will address those in this document.

HENTZEN Would you let me ask you to state if you are for or against?

CHAPEL I am opposed. I have provided the Commission with a packet of information pertaining to the applicant's request. Enclosed are copies of memorandums from both the state and local officials. A copy of the minutes of the previous preceding relating to this type of request, and aerial photographs that I hope will illustrate our concerns. One of the areas of concern is consistent with regulating this type of use. The negative environmental impact of this counties older landfill, there is obviously a higher level of consideration given to these facilities by state and local officials. Since the original use was permitted several years, this is evidence by the high standards set by the areas newest facility at 37th St. and West St. In fact the City has evidence (by information included in your packet) and has adopted a new public position of not locating these types of facilities within ½ mile of the Arkansas River. It would only stand to reason that all C & D Landfills, new or existing, be required to conform to these new standards not only for equity, but also for the welfare and the environmental protection of the public now, and in the future. You have been provided copies of the series of the unequivocal statements made by the Wichita City Manager, the City Attorney, Wichita's top health officials, and several Councilmen. In these public documents, the City's position on the facility of this nature, the request you have before you today, is quite clear. They are strongly against any landfill located within ½ mile of the Arkansas River. As you will recall, C & D Recyclers of Kansas was put in the position to delay the development of their landfill, by pressure exerted on the State by the City of Wichita, despite being 800 feet from the river. From some of these shots, you can see where the proposed landfill was, then where the current landfill was. That facility was relocated at a considerable cost, hundreds of thousands of dollars, and it was relocated outside the ½ mile boundary of the river in conformance with State law and the City's expressed wishes. In addition to the proximity, we have provided you the list of other concerns that the City is adamant about addressing. These include fears over unlined landfills contaminating water supplies, storm water runoff from landfills, and the destruction of wetlands. All of these concerns are applicable if not more so to the applicant's facility and were discussed when this was before you previously. City officials were obviously less concerned about these issues in the past. We would ask for this Commission to align its abuse of these types of outdated facilities with the City public position of not locating landfills within ½ mile of the Arkansas River. C & D Recyclers of Kansas have fulfilled their obligation to safeguard this community against harm to the environment. The

property owners in this district, as well as other districts, where there are landfill sites should expect the same level of commitment from those charged with protecting them. We would also like to note that numerous state and federal agencies recommended this facility not be sited at its present location. Most of the concerns stem from the fact that the Arkansas River channel was rerouted and this facility actually is partially set over the natural river channel. Additionally, this facility is set in the original FEMA regulated floodway. You will also find these letters in your packet, concerning operations not in compliance. The applicant's site has a history of accepting illegal waste and has been fined by the State. Occurrences such as this illustrate the reason for having time limits on Conditional Use permits. It gives the operator a chance to demonstrate that they will make good on their promises. However, it also gives the community and this Commission the ability to stop a problem from continuing to negatively impact an area. There may be questions if the applicant has not abided by the original terms of the Conditional Use, such as, rent, guarantee bond, and the environmental insurance bond.

HENTZEN Sir, are you about to conclude?

CHAPEL May I have one more minute?

HENTZEN Sir, who are you representing?

CHAPEL C & D Recyclers of Kansas.

HENTZEN Who is that?

CHAPEL That is the C & D Landfill, actually it is a recycling center and landfill, located at 37th and West Street. We were the ones who went through the permitting process over the last couple of years. We were held to a completely different scrutiny than most of the landfills in this area now.

HENTZEN Go ahead and use your minute.

CHAPEL There is again some concern that the applicant has abided by the terms in the original Conditional Use such as, rent, guarantee bond, and the environmental insurance bond. Items such as these are one of the few methods of ensuring that the applicant can meet their claims of not negatively impacting the environment. For all the reasons and facts cited and provided in your packet, I would ask that you deny the applicants request and prevent any continued feature damage to the area. Are there any questions?

JEAN E. WIKLE I am the area representative for the K-15 Neighborhood Association, and so is my husband William. I am speaking against item 11. I have brought pictures of our home, the surrounding area, west side of the Cornejo sandy landfill, and trash in the river. We will pass those around so you can see for yourself the area that we are dealing with, and we do have expensive homes across from the purposed landfill. We are professional people in the area; we are not Planeview. We have had an increase amount of dust in our homes and trash from the Cornejo trucks on the highway. We do not want the trees removed along the railroad tracks, as the trees are protection for us from the dust and trash from the landfill. We do not want to see the east side of the landfill looking like the west side in the pictures that are being passed around. There are many environmental concerns including dust, landfill components affecting the water table, the river, and so forth. In your staff report, it states that the Kansas Department of Health and Environment informed the applicant that there is pro-habitation with locating landfills within a ½ mile of the navigable river, and that the permit was not eligible for renewal. There have been numerous residences that have been complaining about pollution, trash, traffic, and the dust. I feel that human beings health and our lungs are more important than money for somebody to operate a landfill. At the District Advisory Board meeting I attended on September 4, the Councilman did not abide by the Roberts rules of order. He did not follow through with the motion on the floor that was followed by a 2nd. He did not ask for further discussion, and he did not ask for a vote. He later took a telephone vote, and there was the majority vote to deny the extension of time for the Cornejo C & D Landfill. We feel there should not be a landfill in the City limits as it affects the health of so many people. We are asking you to deny the extension of the Conditional Use amendment (CU-425) to extend the time for the construction and demolition landfill.

HENTZEN Are there any questions for the speaker? Thank you, next speaker.

BOB MCUNE, 3500 Craig, I have lived at this property since 1977, and we have enjoyed it very much. They came to us and said we want to have a landfill, and we said that is fine, but put one down the road. We only want four or five acres, but today it is to extend the time for which construction and demolition can be dumped into it. Why didn't he put that in the application that he wanted to go ¾ of a mile down here or 2/10's of a mile further down? He didn't, why not? Oh yes we have a park; see this little place right up here from 31st Street. We are going to get in a bus and take a bunch of kids down to the park and run right across the railroad tracks. The kids are having fun down by the railroad, and you are responsible because you said that we could have a park with one entrance and that is on the railroad track. If you want to see a park on a dump, then go to the Boeing dump and see what you got there. You do not have weeds that high. You have not got a tree on the west of 1-35 from that dump. Gentlemen, we want to be good neighbors, every one of us wants to be a good neighbor. There are so many things that have happened to us, we are going to do this and we are going to do that. This gentleman that was on the Commission, and I hate to say this, but the Wichita Eagle published it. They received a check of our money and I think around \$17,000.00 for his campaign, and I think that I should support the dump. It was in the paper. Has there been any kind of fine from the medical waste from anybody that says hey you are throwing something besides construction stuff in our dumps. Have you had a fine like that, why? They say we are not polluting the water. I am a painter and we had lead in the paint. That construction is going within 5-feet of the river body, right in the water, and you know what is going in it, lead. It has concrete from our streets that have oil that has every kind of salt and everything else, 5 feet from the waterbed. I think this man here was the only one to object it because I don't want to make my people in Derby mad. Where do you think that water goes to? It goes right down through Derby. There has not been one report that has not said that river has not been polluted, they have never shown it to you, and they haven't yet. I have only one other thing to say and then I am going to sit down because I talk too much. I think you ought to go to the City and say I think we have one whale of an idea. We are going to build a canal, and we are going to build it right down to the City. Where we are going to put a canal, but instead of having two hundred thousand tons of junk on our highway taken down and just dumped and thrown in, let's put it on a barge in the river and

send it down the river and dump it on the Cornejo dump in the river. This is three miles from the point where they want to put the canal in to where the dump is. I beg you for the last time to deny this. We can't have a park because it won't work.

HENTZEN Is there anyone else to speak on this, one more?

WILLIAM WIKLE 3330 Crystal Drive, I have admired Cornejo and Sons as a minority small business owner for becoming what they are today, but it has been at a cost of being a poor neighbor. I have understood that the berm of the landfill would have grass on it. A portion of the berm that exists today consists of bare dirt and weeds. I don't know if you expect to have a half a mile of that before grass is put on the ground. They have dumped that down to the water table with no plastic cover liner, which I feel could be effecting the groundwater and the river because there is no inspection around and what goes into the landfill, asbestos, mercury, lead and so forth. They have been know to have broken the law on medical waste in the landfill. I feel that they aren't living up to their standard as a good neighbor. I vote to reject the extension of the landfill project.

DAVE NEIL, 3301 Crystal Drive I live right across from where they are going to put the landfill, and I have owned my house for about 45 years. I live by K-15 and the landfill will cause a lot of noise from the heavy machinery and the working equipment they have. They plan to cut down all the trees on the west side of the railroad tracks, which is real bad, and the trees along the Arkansas River. The dust will be outrageous from the heavy equipment they use. Our area has a lot of nice well-kept homes. We have a lot of retired people, and we need to keep the big beautiful trees forever. I really object to them cutting down those trees, that is bad. I am deeply against the landfill, and the air quality that it has caused.

HENTZEN Thank you.

BETTY HOPKINS, 1120 Woodrow I have never spoken in front of people, but I own the property across the street from where this proposal is being made. It is 35, 34, and 36; it is two lots. We have owned it every since Fish and Skies was there. When they take down those trees, that is going to expose my commercial property to all this mess at the landfill. I am thinking about selling this property, and I have three people interested in this property. This is my main income. I am sure Mr. Cornejo has many other incomes, but I need this property to remain viable for my own well are, and anyone that is interested in buying it has spoken that this will hinder the price of the property. I would appreciate if you would oppose this plan. I am not a public speaker, but I would appreciate if you would stop this.

BLAKE I have a question for the speaker. Are you familiar with KDHE report down there?

HOPKINS I am not prepared to answer questions. The man that leases the property is suppose to be here today, but he didn't show up. He knows about this and studies it.

WANITA MCQUE, 3500 Craig I just want to bring up one thing before all of you. That landfill is the entrance into Wichita from K-15; it is a monstrosity. It was supposed to have piles that were 4 feet high, but it has piles 8 feet and 10 feet high. It was supposed to have had a fence to protect all of us, but he didn't do that. We in the beginning thought it would be a good thing that was why it was passed, but he has not kept his promises to us. Just remember you are putting a landfill where everybody comes down K-15 into our beautiful city of Wichita.

HENTZEN Mr. Kaplan you have a rebuttal period.

KAPLAN Putting aside a lot of the emotions in issues as such as this, and you can all imagine I haven't had a good time at the DAB meetings and the other discussions on this issue. I think one of the gentlemen, I want him to know that I am still practicing law because he told me to surrender my license and go into used car sales. Just decide the case on its merits; I know there is lots of emotion. To C & D Recyclers, you asked the questions Mr. Hentzen, I don't know if you really got the answer. The answer is Ritchie. We did not come up and oppose Ritchie's case and it is fine. I don't really know what stake the Ritchie Company have in coming up. They certainly didn't communicate with me, they certainly didn't provide me the material, they certainly didn't advise me that Ritchie was going to be opposing this. Of course you approved Ritchie, and he lost out when he went to Topeka. I don't know about his circumstances, but I don't think that a competitive company by becoming part of the opposition are the kinds issues that you are looking for or want to go with. Importantly, the state law, there has been no changes, and there are not new standards. We talk about standards; there are not new standards. We are talking about the same standards, statues, the same law that has been in place from the very beginning and the same conditions to which this was approved. We go to these meetings, and I find that we promise this and we promise that, and I can't find those conditions anywhere in any report. Every time I talk to somebody, a new condition has been added that my client hasn't complied with. Listen I will ask Ron this? I they want to leave the trees, that is fine; let's leave the trees. We are not going to be able to have the park which is what the City wanted. That was a Park Board instance, not ours. Forget the park if nobody wants the park, forget the park. That will save us a lot of money, and we will leave the trees. Mr. Cornejo, could we leave the trees in place?

CORNEJO Yes.

KAPLAN We will leave the trees in place and pack the availability of the quantity that we can put in the C&D. If you want to write in a condition that we leave the trees, then we will leave the trees. I don't know anything about a telephone vote from the CPO, there was no conversation when I was there. This business of a vote being taken after the meeting was adjourned, I can't address that.

HENTZEN Your time is up, do you need a couple of minutes?

KAPLAN One minute. Here is all I want folks, and I apologize if I appear to be a little bit adversarial along this issue. All I want is an opportunity to present this to KDHE. If we satisfy KDHE, then I believe we will have satisfied your concerns. If we do not satisfy KDHE, then what you do isn't going to make any difference anyway because we are not going to have a park. Before I can go to KDHE I have got to have the approval of the Conditional Use then we will take up the issue of the river, the environment, the pollution, and everything concerned with it that everyone has been talking about at the KDHE meeting. I asked Ron while I was sitting there are you not inspected? Ke is inspected weekly, he is inspected monthly, he is inspected unannounced, and he is

inspected annually. He is inspected by County Health, he is inspected by Central Inspection, he is inspected by KDHE, he is inspected, inspected, and inspected.

GAROFALO I have a couple of questions I would like to ask.

HENTZEN To whom.

GAROFALO To Mr. Kaplan.

HENTZEN Go for it.

GAROFALO I would like you to address some of the complaints that the neighbors have made about the operation and what takes place.

KAPLAN I sincerely believe that the majority of those complaints are related to the rock crushing operation. There isn't any question that the rock crushing operation causes dust; that was what Mr. Kemp was talking about, but that is a separate and distinct operation. It is not the subject of this discussion, but yes he does have a rock crusher and I am sure it does create dust, trash, and other conditions. Mr. Miller will tell you any complaints that Mr. Cornejo has received, and it is in your staff report, have been rapidly and promptly responded to and remediated. So when Ron has complaints, he has responded to those. There are a lot of inaccurate facts, medical waste, and things of that sort. They are simply inaccurate. We are talking about things that simply did not happen.

GAROFALO One lady mentioned something about a fence. Was there any condition like that?

KAPLAN I think the fence condition; the fencing condition is there. I will let Ron speak to that.

CORNEJO It is a wire fence. Part of our conditions was to have a wind fence, and we do have a wind fence in place. I don't see him here now, but we did have Central Inspection person that comes by and monitors us. He has been by, and we are in compliance with our fencing.

BARFIELD I have a question?

HENTZEN Wait a minutes, Mr. Wells.

WELLS Were you finished? Go.

GAROFALO I had one more questions for Ron or Mr. Kaplan. In 2003, if a permit were denied, what takes place then, do you still have to clean it up? What procedure goes on after that?

CORNEJO If our permit is denied in 2003, at that point we are going to have to come back to the City and come up with a closure plan of some sort to leave it incomplete, but finish it out. I don't know how it would be finished out. Some method or means we would have to come up to finish it. When I say finish it, I don't mean fill it with more C & D. It would have to be covered and completed.

HENTZEN Mr. Wells?

WELLS Who pays for it if you did get it? Who is lined up to pay for the park?

CORNEJO We were paying for the park as part of it. We had bonds posted with KDHE, and we have a bond with the City of Wichita that ensures the closure of that landfill.

WELLS Who inspects the material coming in there?

CORNEJO We are monitored weekly by the County; I pay a fee annually to the County. We are also monitored by Central Inspection. We also have another arm of the County, that is the City/County Health Department, and they come by and check us also.

WELLS Last question. Do you excavate it and then fill it or do you fill it and then cover it up, or what, or some or all of the above?

CORNEJO Our operation has been to filling. The soil has been pulled out and the material has gone back on top of the cover material.

WELLS Do you think you can get a permit from the KDHE or are you? I keep hearing different sides.

CORNEJO We believe that we can get a permit from KDHE. We believe that we should have the same opportunity that the Ritchie Company had. They were approved at this level and whether they received it from KDHE or not, I don't know. We feel that we should have the same opportunity.

ANDERSON What kind of arrangement do you have with the City, in as much as they own the property? Do you have a long-term lease?

CORNEJO I have an annual lease with the City, and that lease runs concurrent with the CUP. So if my CUP runs out, I quit paying lease on the property.

ANDERSON What is the payment? Can you disclose that?

CORNEJO I believe I pay about \$13,000 a year.

ANDERSON That is for all of that land?

CORNEJO It is not all of that property; portions of that property I own. There is about a 17 acre piece of that that the City of Wichita owns.

ANDERSON The City of Wichita already owns a piece of this land use prior to now.

CORNEJO Yes, we are only asking for an extension.

HENTZEN Is that all of the questions?

BARFIELD No, it is not.

HENTZEN Mr. Barfield?

BARFIELD Dale, was your reason for denial partly based on the position of KDHE?

MILLER Our position was mostly based on the fact that the Council has an announced policy that indicates they are not in favor of C & D landfills at locations similar to this. Based on the previous case, where they went to work to oppose and develop that policy. So we are following Council policy.

BARFIELD I noticed here in #3 of the staff report, it says the City has raised concern about the location of the C & D in its proximity to the river and environmental impact. Now are we talking about this particular C & D or are we talking about the C & D that the other gentleman was referring to?

MILLER The situations are nearly identical. From our perspective it was a generic statement, that any landfill or C & D landfill that would be located adjacent to a river like this would be a concern.

BARFIELD Now my final question, since the City has raised these concerns at the DAB, did the City Council member raise these same concerns?

MILLER I don't remember that Councilman Lambke did anything other than moderate the meeting at the District Advisory Board. I don't remember him saying anything at the meeting one way or the other. They are supposed to be relatively neutral at those meetings and just moderate.

BARFIELD Finally, you also mentioned in the staff report that the applicant has known and you don't indicate how long, but he has known that the Conditional Use that he was granted would end effective April 1, 2003. How long has he known that?

MILLER That was in the original Conditional Use when it was approved. That has been there since 1997.

KAPLAN Indulge me one comment, Mr. Hentzen:

HENTZEN Yes, go ahead.

KAPLAN Yes we knew the termination date, we certainly did. We were cut back on the number of years at the time the initial request with the understanding that we could seek an extension. I think we had asked for 10 years, we were given six, and we said that we would live with that, but we may have to come back. Then we lost two years in Topeka in the process so we ended up with four years and four months of actual operation. We should at least go back to our six years as far as one case being generic, or being the same as another case. I don't agree with Dale. What he is talking about is the Ritchie case, which we can prove that KDHE would not issue them a permit on. Mr. Mitchell is here; I sure wish you would talk to him. I can't imagine that each case on all squares are identical each with the other. We are talking about the North West street property and a generic statement; you can't have a generic statement in land use. There are not two sites that have identical factors. That is just not a fair statement. I simply come back to leave it up to KDHE, and they are going to satisfy your concerns one way or the other.

BARFIELD Mr. Kaplan, why wouldn't you go then before KDHE and then come back to us once you have the permit in hand?

KAPLAN Excuse me, sir.

BARFIELD Why would you not go before KDHE, acquire the permit, and then come before us?

KAPLAN KDHE won't consider a permit unless we have the Conditional Use. This is the first step.

BARFIELD You have a Conditional Use until April 1, 2003, so you have six to eight months as he has already indicated.

KAPLAN What they have told me is that I have a permit until April 2003 to apply to them. They need to see that my Conditional Use has been extended before they would allow for a permit.

HENTZEN Mr. Warren.

WARREN We have spent a lot of time on this, and it is important that we do. We do have a man that is well recognized here that is an expert in this field, and I think we ought to give him a couple of minutes. I would like to ask that we give him a couple of minutes, and ask Mr. Mitchell to make some comments on this.

HENTZEN Okay, let's hear Mr. Mitchell.

BARFIELD Let me say before he begins, that we also have what I consider an expert from KDHE. Mr. Jack Mound who was apparently not invited here, and I think it would be fair for us to hear his side of the story as well. That is what I requested before, and it has not happened.

HENTZEN Our agenda was public information, and if he wanted to be here, he could be here. Go ahead, Mr. Mitchell.

MITCH MITCHELL I think probably the question that I could give you some indication on that I know for a fact has bearing. There was a statement made that this is the old river channel. It was part of the old Chrisom Creek channel, not the Arkansas River, but where those two came together back in the early 1920's, no one knows for sure. So part of this area was a river channel or a creek channel at one point. The FEMA floodway was badly drawn. They did revise it, based on new cross sections of what is there today, not what was on some map that they used at the time the map was drawn in 1986. Those are the two things I know for sure. It is my belief that the City's position and the KDHE position taking on the landfill in the 37th Street area was based on fear on what it might do the Equus Beds water supply. This area is not connected to the Equus Beds in any reasonable fashion so that you don't have the same concerns over what could happen with leakage in the landfill at this location that you would have up near the Brooks Landfill. I believe that was the reason that the City took the position that they did.

MCKAY Bring it back to the Commission.

HENTZEN Any other questions? Lets bring it back to the Commission. What is the pleasure of the Commission on this issue?

MOTION: Deny application.

BARFIELD moved, **BISHOP** seconded the motion.

HENTZEN We have a motion to deny, and we have a second. Any discussion?

WARREN I am going to oppose that motion, but I am going to oppose it on the basis of some comments that I would like to make. One is of course I know the people here today are sincere, and we are going to be sensitive to what they are saying. I remember this in 1997, and I don't think the comments at that time were any different to what we are hearing and experiencing today, and they were sincere then. I think we number one accept the fact that nobody on this board that I am aware of is an expert in health, environment, or river quality. I don't think we ought to be basing our decisions on those things because there are other agencies that are experts that are going to be looking at those factors. They are the ones that are going to have to decide, and they have more expertise than we do. I think now that we can look back at 1997 and say that we are in a better position to make an evaluation because we have had a 3 year operation out there. I would have to tell you that in my opinion, even though people may be always opposed to these types of landfills, that these people are as good and as fair as you are going to ever find in Sedgwick County. I believe Cornejo has done as good a job, and I can attest to that, they are tough. Derby operators use this landfill a lot and there hasn't been an operator down there that has had a truck and been told to take your load back; take your load somewhere else because it won't fit in this landfill. In that sense, these guys are tough. They are tough as you are every going to find in this type of operation. These sites are important; they are important to the people in the area out there. If you have every torn down a shed and tried to figure out what to do with it, then you know how important they are. If you have construction debris, then you know, these things are very important to us. Based on those things, I will tell you this, when the Derby Planning Commission eighteen months ago were considering the landfill down there, they cited this landfill as being the type of operation that we would like to have. They cited the fact that other applications couldn't measure up to what Cornejo and its organization had done. I am going to oppose the motion because I think there ought to be a chance given to these guys.

HENTZEN Mr. Barfield do you have a comment?

BARFIELD Yes sir, I certainly do. My motion to deny had nothing to do with the quality of operations that this applicant runs. It is based solely on the fact that I recognize KDHE as the ruling entity in these matters. They have clearly said, as the way I interpreted it, they will not consider the renewal for permit at this location. That does not dismiss for one moment that there is a need for these types of operations, but we have to consider those locations. Not the operator, but the location, and KDHE has specified this site as not being a suitable site for this type of operation. That is what my motion is based upon.

HENTZEN Mrs. Bishop?

BISHOP I am just going to add that I am going to support the motion, and I don't think this is the right place for a C & D operation. In addition to that, as I recall, we were told that City Council has a policy of not placing this kind of site along the river. I mean how many times in one meeting can we tell the Council that we know better. That is a policy that I think if we continue to do that, I think we risk making this body irrelevant and that is all that I have to say on that.

HENTZEN Don Anderson.

ANDERSON This is kind of a weird problem for us simply because the City owns that property. They have a lease to these people for the use of that land for this purpose, and they have had it for sometime. I have a real problem with denying them the use of that property and what they want to use it for based on a lease that they have got with the City of Wichita who owns the land. Frankly, I feel I am going to have to oppose that motion as well. I think if they should be given the opportunity to get the approval from KDHE and if they don't do it, then they have a problem with the City Council. The City of Wichita is the owner of the property. The Planning Commission really has, all we can do is say, yea guys go do it.

MOTION: To call the question.

WARREN moved, **MARNELL** seconded the motion, and it carried (11-0).

ORIGINAL MOTION: Deny Conditional Use.

MOTION FAILED (3-8). BISHOP, BARFIELD, and BLAKE in favor.

MOTION: Approve Conditional Use subject to conditions #4 through #25 included in the staff report with the exception of the time limit. The Conditional Use is to be renewed for 6 additional years, subject to KDHE approval. The trees are to remain on the west side.

MCKAY moved, **ANDERSON** seconded the motion, and it carried (8-3). **BLAKE, BISHOP, BARFIELD** opposed.

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12. Amending the MPO's 2002 Unified Planning Work Program (UPWP) to obligate federal funds for the South Area Transportation Study, presented by Jamsheed Mehta.

No Quorum of MAPC members

13. Amending the MPO's 2002 Transportation Improvement Program (TIP) to reflect minor changes to certain federally funded projects, presented by Jamsheed Mehta.

No Quorum of MAPC members

The Metropolitan Area Planning Department informally adjourned at 5:25 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, Mike Lindebak, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2002.

Mike Lindebak, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)